HUDSON MEADOWS
Urban Renewal Development Corporation

June 17, 2002

To: Ms. Grisell V. Diaz-Cotto
Remedial Project Manager
Central New Jersey Remediation Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, New York 10007-1866

Dear Ms. Diaz-Cotto:

Please find enclosed herewith Answers to your request for information.

The Site in question was the subject of CERCLA Litigation in the Federal Court. We were represented by Sills, Cummis, et al., Partners: Jeffrey H. Newman and Robert DiVita, Esquires, 1 Riverfront Plaza, Newark, NJ 07102 (telephone (973)643-7000). I forwarded your inquiry to them. Their response is contained in the enclosed documents. These attorneys continue to represent us with respect to these properties and I believe they are totally familiar with the subject matter of your inquiry.

May I suggest that you contact them directly. If I can be of any further service to you, please advise.

Thank you for your courtesies.

Respectfully yours,

David A. Biederman
Executive Assistant

DAB
w/encs.
cc: Clay Monroe
Assistant Regional Counsel

510299

525 Riverside Avenue, Lyndhurst, New Jersey 07071 • (201) 460-8904 • (201) 460-0088

SILLS CUMMIS RADIN TISCHMAN EPSTEIN & GROSS

A PROFESSIONAL CORPORATION

ONE RIVERFRONT PLAZA
NEWARK, NEW JERSEY 07102-5400
(973) 643-7000
FAX: (973) 643-6500
E-MAIL: SILLSMAIL@SILLSCUMMIS.COM

712 FIFTH AVENUE
NEW YORK, NY 10019
(212) 643-7000
FAX (212) 643-6550

ONE EMBARCADERO CENTER, SUITE 2440
SAN FRANCISCO, CA 94111
(415) 643-7000
FAX (415) 643-6500

17 GORDON'S ALLEY
ATLANTIC CITY, NJ 08401-7406
(609) 344-2800
FAX (609) 344-7035

WRITER'S DIRECT DIAL NUMBER:
(973)643-5782

WRITER'S E-MAIL:
rdivita@sillscummis.com

ARTHUR J. SILLS (1917-1982)

CLIVE S. CUMMIS
STEVEN S. RADIN
MICHAEL B. TISCHMAN
MORTON S. BUNIS
BARRY M. EPSTEIN
STEVEN E. GROSS
THOMAS J. DEMSKI
JEFFREY H. NEWMAN
LAWRENCE S. HORN
JEFFREY J. GREENBAUM
SIMON LEVIN
STEPHEN J. MOSES
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JACK M. ZACKIN
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JERRY GENBERG
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MARGARET F. BLACK
BRIAN S. COVEN
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JOSEPH L. BUCKLEY
DAVID J. RABINOWITZ
THOMAS JAY HALL
MICHAEL I. CHAKANSKY
STANLEY U. NORTH, III
JAMES D. TOLL
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ALLAN C. BELL
DAVID W. GARLAND
MARK S. OLINSKY
RICHARD J. SAPINSKI
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JACK WENIK
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TED ZANGARI
NATHAN E. ARNELL
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PAUL P. JOSEPHSON
SUSAN STORCH
ERIC S. ARONSON
ROBERT R. HEMPSTEAD
DAVID J. PAPIER
ANDREW H. SHERMAN
WILLIAM J. TINSLEY, JR.

SENIOR COUNSEL
HERBERT L. ZUCKERMAN

OF COUNSEL
MITCHEL E. OSTRER
DIANE M. LAVENDA
CHERIE LEE MAXWELL
STEVEN R. ROWLAND
HELEN KLEINER
HOWARD O. THOMPSON
JULIA L. BONSAL
LYNNE ANNE ANDERSON
TRACEY SALMON SMITH
GAIL B. COOPERMAN
PHILIP E. STERN
MARK S. LEVENSON[¤]

[¤] ADMITTED IN NY ONLY
[+] ADMITTED IN NY & CT ONLY

HARRY B. NORETSKY
CYNTHIA P. LIEBLING
JERROLD J. WOHLGEMUTH
MICHELE F. VAILLANT
ERIC D. MANN
BENNET SUSSER
BARBARA QUACKENBOS
LORYN P. RIGGIOLA
REGINA T. BALDWIN[¤]
VANESSA M. KELLY
KAREN LEVINE
LAURA LENCSES McLESTER
RUSSELL R. DuPUY[+]
RHONDA SOBRAL O'TOOLE
IVAN J. KAPLAN
STEVEN D. GORELICK
WILLIAM R. STUART
ANDREW W. SCHWARTZ
MICHAEL R. WASSERMAN
GWEN L. COLEMAN
LORI M. WALDRON
WILLIAM R. HORWITZ
RENEE McDONALD HUTCHINS
JILL TURNER LEVER
KAREN J. KRAUSE
JEFFREY M. DARWICK
THOMAS A. DELLA CROCE
DAVID JAY
ERIC I. ABRAHAM
JODI F. BOUER
BRETT M. POPOLOW
JASON L. JURKEVICH
PATRICK SHIN
RUTH M. RUGGERO
ELNARDO J. WEBSTER II
JAMES E. JASAITIS
SHAUNA C. BRYCE
CLARK P. RUSSELL[¤]
KATHLEEN CROCCO
KENNETH HAYES
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ANJANA PATEL
ROBERTA J. SMITH
CHRISTOPHER A. BARBARISI
VINCENT R. LODATO
BRIGETTE N. SHRANK
WILLIAM LOUIS HURLOCK
ANNE BUCKLEY
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JONATHAN S. JEMISON
DAVID I. HELD
ZANNA KONNER LANTZMAN
SARA BETH LEWIS
JENNIFER D. DOUGHERTY
SETH L. BLOOM
JILL M. NUSBAUM
SHANA E. RABINOWITZ
DANIEL TURINSKY
LIZANNE W. WALDNER
LENORE D. GOLDBERG
NOAH J. FISETTE
RICHARD H. HAHN
BORIS MANKOVETSKIY
REBECCA A. MOLL
DANA AYN ROSENTHAL

PLEASE REPLY TO NEWARK

June 14, 2002

David Biederman, Esq.
Hudson Meadows Urban Renewal Dev. Corp.
525 Riverside Avenue
Lyndhurst, New Jersey 07071

Re: Hudson Meadows Urban Renewal Development Corp.
Kearny Redevelopment Project

Dear Mr. Biederman:

As you requested, I am enclosing herewith copies of the following documents relating to the above referenced matter:

1. Master Leasing and Option Agreement between the Town of Kearny and Mimi Development Corp.;

2. Lease Agreement between the Town of Kearny and Mimi Development Corp.;

3. First Amendment to Lease and Master Leasing and Option Agreement between the Town of Kearny and Hudson Meadows Urban Renewal Development Corp., and

4. Various Pleadings in matter titled Hudson Meadows Urban Renewal Corp. -v- Hackensack Meadowlands Development Commission, et al, filed in United States District Court for the District of New Jersey, Civil Action No. 97-5727,

I have reviewed the information request you provided to me and, except as follows, have no documentation in my files which would assist you in responding.

I am unfamiliar with the street addresses of the properties included in this redevelopment project, however the block and lot numbers of the properties subject to the agreements are

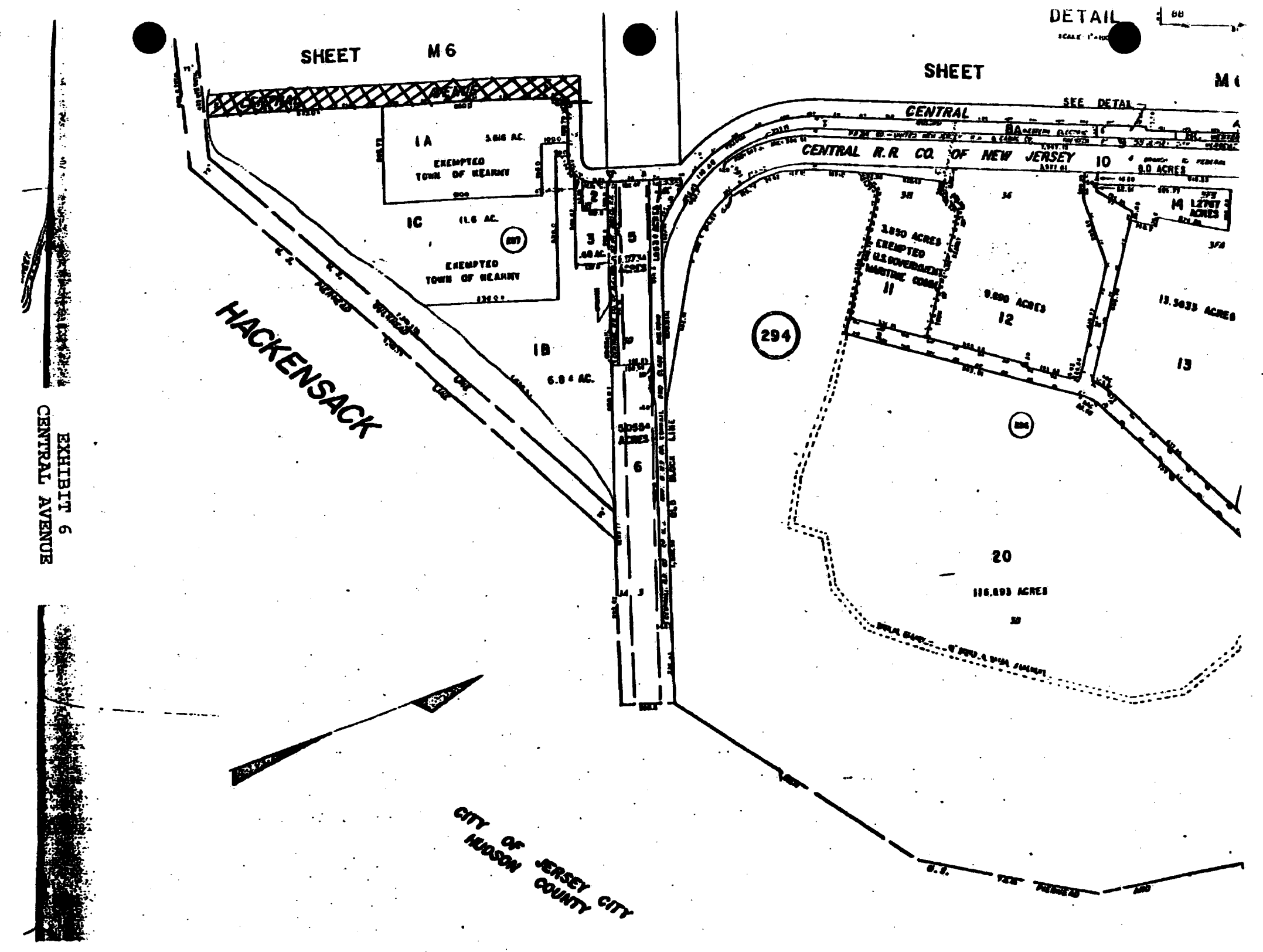
identified in the First Amendment to Lease and Master Leasing and Option Agreement referenced above. Please note that Hudson Meadows and it predecessors have leased only one parcel of land from the Town of Kearny under the Lease Agreement referenced in paragraph 2 above, that being a ± five (5) acre parcel along Bergen Avenue (see Section 2.2 and Exhibit B of the First Amendment to Lease and Master Leasing and Option Agreement). Hudson Meadows has an option to lease the balance of the properties identified in the agreements.

As you also requested, I am returning the corporate book for Hudson Meadows Urban Renewal Corp.

If you should have any questions, or if I can be of any further assistance, please feel free to call me.

Very truly yours,

Robert R. DiVita


SHEET M6
SHEET
DETAIL
CENTRAL AVENUE
CENTRAL R.R CO. OF NEW JERSEY
SEE DETAIL
1A
EXEMPTED
TOWN OF KEARNY
1C
EXEMPTED
TOWN OF KEARNY
1B
6.84 AC.
3
5
6
HACKENSACK
294
10
11
3.850 ACRES
EXEMPTED
U.S. GOVERNMENT
MARITIME COMM.
12
9.890 ACRES
13
13.5035 ACRES
14
20
116.893 ACRES
CITY OF JERSEY CITY
HUDSON COUNTY
EXHIBIT 6

AMENDMENT TO LEASE AND MASTER LEASING AND OPTION AGREEMENT

THIS AMENDMENT to LEASE and MASTER LEASING AND OPTION AGREEMENT is made as of this 2nd day of November, 1999 (this "Amendment") by and between THE TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the "Town"), and HUDSON MEADOWS URBAN RENEWAL DEVELOPMENT CORPORATION, a New Jersey corporation ("Hudson").

R E C I T A L S

A. The Town and MIMI DEVELOPMENT CORP. ("Mimi"), entered into a Master Leasing and Option Agreement made as of August 8, 1979 (the "Master Agreement") pursuant to which the Town granted to Mimi the exclusive option to rent from the Town, from time to time, a portion or portions of the real property described on Exhibit 1-A annexed hereto and hereby made a part hereof (the "Property"), consisting of approximately 638.84 acres of land.

B. The Town and Mimi entered into a Lease Agreement made as of August 8, 1979 (the "First Lease") pursuant to which the Town leased to Mimi a portion of the Property (the "First Redevelopment Parcel") consisting of approximately five (5) acres, which First Redevelopment Parcel is more particularly described by metes and bounds description annexed hereto as Exhibit 2.

C. Hudson was formerly known as, or is otherwise the successor-in-interest to, Mimi.

D. The Town and Hudson are parties to a certain Civil Action pending in the United States District Court of New Jersey identified as Civil Action No. 97-5727 (JAG) (the "Action").

E. The Town and Hudson desire to settle this Action and in connection therewith to amend the Master Agreement and First Lease as hereinafter set forth.

NOW THEREFORE, in consideration of settlement of the Action, the covenants and undertakings hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Hudson hereby agree as follows:

1. Terms not defined herein shall have the same meanings ascribed to them in the Master Agreement and First Lease unless otherwise indicated to the contrary.

2.1. The parties have conferred for purpose of more clearly identifying the tracts or parcels of land listed and intended to be listed on Schedule A annexed to the Master Agreement, and for purposes of reconciling Schedule A with the current tax maps of

the Town. Schedule A annexed to the Master Agreement shall be amended to include and identify the tracts or parcels of land as set forth on Exhibit 1-A annexed hereto.

2.2. The parties have conferred for purpose of more clearly identifying the First Redevelopment Parcel listed on Schedule A annexed to the First Lease. Schedule A annexed to the First Lease shall be amended to include and identify the tracts or parcels of land as set forth on Exhibit 2 annexed hereto.

2.3. Hudson and the Town have agreed to include certain additional tracts or parcels of land in the Redevelopment Parcels and to omit certain tracts or parcels of land from the Redevelopment Parcels, as more particularly set forth on Exhibit 1-B annexed hereto. The Town acknowledges its belief and desire that the parcels to be added are "in need of redevelopment". To effectuate the aforesaid addition and omission of certain tracts the Town shall, within thirty (30) days after the date hereof, initiate and conduct the necessary authorizing proceeding pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1) (hereinafter, "the Redevelopment Law"). The additions and omissions shall be accomplished in a single transaction and accordingly no parcel shall be added or omitted unless all parcels to be added are determined to be "in need of redevelopment" either by the Town or by "HMDC" (hereinafter defined) as more particularly described in Section 2.6 hereof.

2.4. Hudson and the Town have conferred and acknowledge their belief that Lot 1-C in Block 294, as shown on the Town tax maps, is, and was intended to be, included in the redevelopment area previously declared "blighted" under the Blighted Areas Act (N.J.S.A 40:55), as confirmed by Stipulation of Settlement entered in Superior Court of the State of New Jersey, Civil Action Docket No. C-3950-79. In the event any third party shall institute a challenge to the parties understanding, agreement and belief set forth in this Section 2.4, the Town shall notify Hudson, who at Hudson's sole cost and expense, may elect to defend against said challenge (the Town hereby agreeing to cooperate with Hudson in the prosecution of such contest) or elect not to defend such challenge. If Hudson elects not to contest such challenge, or is unsuccessful in such contest, then in either of such events, the Town will, within thirty (30) days, initiate and conduct the necessary authorizing proceeding pursuant to the Redevelopment Law to find said Lot 1-C in Block 294 in need of redevelopment.

2.5 Hudson covenants to defend, indemnify and hold harmless the Town from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, in connection with any boundary line disputes, or any parcel or tract identification disputes that may arise among Hudson, the

Town and third parties relating to the Redevelopment Parcels identified on Exhibits 1-A, 1-B and 2 attached hereto.

2.6. Hudson and the Town agree and acknowledge that the Hackensack Meadowlands Development Commission ("HMDC") exercises exclusive powers to designate lands within the Hackensack Meadowlands District ("the District") as areas "in need of redevelopment", pursuant to N.J.S.A. 13:17-20. However, the parties agree that to the extent certain parcels or tracts included in the Redevelopment Parcels, that are subject to the Master Agreement and to this Amendment, which are not located within the District, and which have not been previously declared "blighted", the Town shall, within thirty (30) days after the date hereof, initiate and conduct such proceedings, pursuant to the Redevelopment Law that may be necessary to declare such parcels or tracts outside of the District ("the Municipal Redevelopment Parcels") as being areas in need of redevelopment, concurrently with the HMDC's anticipated designation of certain Redevelopment Parcels located within the District as being "in need of redevelopment". (The parties anticipate that the aforementioned HMDC Redevelopment Plan proceedings will be substantially commenced within the first quarter of 2000.)

2.7 It is further agreed that, to the extent certain parcels or tracts included in the Municipal Redevelopment Parcels have not been previously declared "blighted", the Town will cause the Municipal Redevelopment Parcels to be declared areas in need of redevelopment in a manner consistent with the aforementioned HMDC Redevelopment proceedings pertaining to the Redevelopment Parcels, and, to this end, the Town agrees that within thirty (30) days of the date of execution hereof, a resolution shall be introduced setting forth the Council's belief and desire that the Municipal Redevelopment Parcels are "in need of redevelopment", and authorizing the study of the Municipal Redevelopment Parcels for the purpose of initiating the proceedings prescribed by the Redevelopment Law for declaring that the Municipal Redevelopment Parcels are areas in need of redevelopment in accordance with Section 2.6 hereof.

2.8. The Town and Hudson acknowledge that, with respect to tracts or parcels within the District, the uses permitted within the Redevelopment Plan annexed to the Master Agreement and First Lease shall be subject to the HMDC's determination of such uses as the HMDC may permit in the exercise of its exclusive redevelopment powers pursuant to N.J.S.A. 13:17-20. However, the parties agree that, in addition to those uses permitted under the Redevelopment Plan annexed to the Master Agreement and First Lease, (i) any use permitted within "SKM - South Kearny Manufacturing" zoning, (ii) retail use, entertainment use, recreation use and general office use, (iii) any other use permitted by the HMDC, and (iv) solely with respect to Lot 1-C in Block 294, use for short and long-term parking and storage of

trucks, trailers and containers (clauses (i) through (iv) collectively called "Additional Uses"), would be desirably included among the uses permitted on the Municipal Redevelopment Parcels and in any HMDC adopted Redevelopment Plan pertaining to the Redevelopment Parcels. The parties therefore further agree that, subject and conditioned upon the HMDC's approval and adoption of these Additional Uses with respect to Redevelopment Parcels within the District, the Redevelopment Parcels may be leased for the Additional Uses. The Town further agrees that the Town will also enable redevelopment in accordance with the Additional Uses with respect to the Municipal Redevelopment Parcels, by conducting appropriate municipal zoning and/or redevelopment plan proceedings.

2.9. The Town also agrees with respect to both the Redevelopment Parcels and the Municipal Redevelopment Parcels that the Town will not: (a) adopt or enforce any municipal zoning or use requirement that would be in addition to, or inconsistent with, the HMDC's zoning or use requirements; or (b) exercise its land use, regulatory or police powers in any manner that would impair the use of the Redevelopment Parcels and Municipal Redevelopment Parcels as permitted by the HMDC. The Town will cause its zoning ordinances to be amended as may be necessary to conform to the covenants and agreements set forth in Section 2.8 above.

2.10. The Town and Hudson acknowledge that some or all of the Redevelopment Parcels are the subject of an investigation by the HMDC to determine if the Redevelopment Parcels (together with other lands within the HMDC's jurisdiction) are in need of redevelopment. The Town and Hudson further acknowledge and agree that, to the extent Hudson enters into a redevelopment agreement with HMDC for redevelopment of some or all of the Redevelopment Parcels, such redevelopment agreement and the redevelopment plan enacted by the HMDC (collectively the "HMDC Plan") shall govern and control redevelopment of the Redevelopment Parcels, and to the extent of any conflict among the Master Agreement, the First Lease and the HMDC Plan, the Master Agreement and First Lease shall be deemed further amended to reflect the HMDC Plan, and shall be deemed amended so as not to be inconsistent therewith. Moreover, the Town shall not take any action inconsistent or inimical to the redevelopment plan enacted by HMDC to the extent same deals with any property owned by, or leased by the Town to, Hudson.

2.11. The Town agrees, within thirty (30) days of the date of execution hereof, to introduce a resolution and thereafter conduct such proceedings, as may be necessary, to vacate that portion of Central Avenue shown crosshatched on Exhibit 6 annexed hereto, subject to reservation of utility easements reasonably acceptable to the Town and Hudson. Hudson covenants to defend, indemnify and hold harmless the Town from

and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, in connection with disputes that may arise relating to the rights of third parties to said vacated portion of Central Avenue.

2.12 To the extent that any parcel or tract included in the Master Agreement or in this Amendment which has not been, or may not be, determined to be "in need of redevelopment" pursuant to the Redevelopment Law, then, in that event, the Town shall, for the purpose of aiding and cooperating in the planning, undertaking, construction and operation of the redevelopment project, offer to grant to Hudson an option to lease such parcels or tracts on the same terms as are contained in the Master Agreement and this Amendment, excepting only those terms that may be applicable exclusively to lands designated as being in need of redevelopment under the Redevelopment Law.

3. The Financial Agreement annexed to the Master Agreement and First Lease as Exhibit 2 shall be modified to the extent required to conform the Financial Agreement to the terms of the Master Agreement and First Lease as amended hereby, and the terms and requirements of The Long Term Tax Exemption Law, N.J.S.A. Section 40A:20-1, et. seq.

4.1. The first sentence of Section 2. of each of the Master Agreement and the First Lease is hereby amended by adding the words "Subject to Section 2.5 of the Amendment," before the words "[i]n order".

4.2 The last sentence of Paragraph (2) of Section 2.a. of the Master Agreement is hereby amended by adding the words "or to consummate a Lease for a particular Redevelopment Parcel" after the word "Agreement" appearing in the last line thereof.

4.3. The HMDC having advised the Town, in the course of negotiation of the terms of purchase by the HMDC of certain lands owned by the Town (more fully described in Paragraph 22 of this Amendment), that the State of New Jersey generally reserves riparian claims as to the Redevelopment Parcels, paragraph (3) c. of section 2. of the Master Agreement shall not be applicable to the parcels to be added to the Master Agreement listed on Exhibit 1-B of this Amendment.

5. Section 4.a. of the Master Agreement is hereby deleted and the following substituted in lieu thereof:

> "The term of each Lease executed hereunder will be a period commencing on the Commencement Date under the applicable Lease and will end on the date which is the earlier of (x) seventy-five years after the Commencement Date of the Lease executed for the final Redevelopment Parcel, or (y) the 145 year anniversary of the date of this Amendment." Rent shall be payable

as stated in the Master Agreement and in each Lease thereunder.

6. Section 4.a. of the First Lease is hereby deleted and the following substituted in lieu thereof:

"The term of this First Lease shall commence on the Commencement Date of this First Lease and will end on the earlier of (x) seventy-five years after the Commencement Date of the "Lease" (as such term is defined in the Master Agreement) executed for the final Redevelopment Parcel (as such term is defined in the Master Agreement), or (y) the 145 year anniversary of the date of this Amendment."

7. All references in the Master Agreement, the First Lease and the exhibits annexed thereto to "best efforts" shall be deemed deleted and the words "reasonable and good faith efforts" substituted in lieu thereof.

8. Reference is made to Section 11.a. of each of the Master Agreement and First Lease. The Town acknowledges that delays in redevelopment of the Redevelopment Area by Hudson have resulted from the Action and prior disputes between the Town, Hudson and other third parties. Accordingly, the Town further acknowledges that such delays constitute enforced delays in accordance with Section 15 of each of the Master Agreement and the First Lease and shall not constitute a "speculation in land holding" within the meaning of Section 11.a. of the Master Agreement.

9. Reference is made to Sections 11.b. and 12.a.(1)(A) of each of the Master Agreement and First Lease. The Town acknowledges that the phrase "financing necessary to enable the Redeveloper...to perform its obligations with respect to the Improvements" in Section 11.b. and the phrase "only to the extent necessary for making the particular improvements" in Section 12.a.(1)(A), includes so called "soft costs", such as, for example, costs and expenses incurred in connection with the preparation of tests and studies, preparation of surveys and plans, obtaining permits, premiums for title insurance, tenant improvement allowances and architectural, engineering, consultants and attorneys fees.

10. Section 11.b. of the Master Agreement is hereby amended by adding the following subparagraphs (1)(D), (1)(E) and (1)(F) following subsection 1(C), relettering following subsections:

" or (D) to a joint venture or other association satisfying the requirements of the Redevelopment Law and Section 12 of the Master Agreement comprised of one of the ELM Enterprises group of companies and Hudson which the Town shall approve, within ninety (90) day

upon submission of due evidence both of the formation and qualification of such entity to act as redeveloper pursuant to the Redevelopment Law, the Master Agreement and this Amendment; or

(E) another joint venture or other association of which Hudson is a part whose purpose is redevelopment of the Redevelopment Area, upon the Town's written consent, which consent shall be granted or denied within ninety (90) day after submission of the qualifications of such entity to act as redeveloper, but such consent shall not be unreasonably withheld, nor shall such consent be conditioned; or

(F) a redeveloper approved or consented to by the HMDC."

11. Section 11.b. of the Master Agreement is hereby further amended by adding the following subparagraph 1(D) [relettered (G)](iii):

(iii) prior to issuance of the certificate provided in Paragraph 9 hereof, a lease or sublease requiring construction of Improvements on a Redevelopment Parcel, or for occupancy of all or a portion of the Improvements upon issuance of such certificate;".

12. Section 12.a(4)(C) of each of the Master Agreement and the First Lease is hereby amended by adding the words "to foreclose the Mortgage Loan or otherwise obtain possession of the Leased Property, and thereafter" after the word "opportunity" appearing in the tenth line thereof.

13. Section 18.b. of the Master Agreement is hereby amended by adding the words "for a period of ninety (90) years" after the word "effect" appearing in the first line thereof.

14. Section 18.d. of the Master Agreement is hereby amended by adding the following after the parenthetical appearing in lines 5-6:

" or to a joint venture or other association satisfying the requirements of the Redevelopment Law and Section 12 of the Master Agreement comprised of one of the ELM Enterprises group of companies and Hudson which the Town shall approve, within ninety (90) day upon submission of due evidence both of the formation and qualification of such entity to act as redeveloper pursuant to the Redevelopment Law, the Master Agreement and this Amendment; or

to another joint venture or other association of which Hudson is a part whose purpose is redevelopment of the Redevelopment Area, upon the Town's written consent,

which consent shall be granted or denied within ninety (90) day after submission of the qualifications of such entity to act as redeveloper, but such consent shall not be unreasonably withheld, nor shall such consent be conditioned; or

to a redeveloper approved or consented to by the HMDC."

15. Section 29 of the Master Agreement and Section 30 of the First Lease is hereby amended by adding the words "acting reasonably and in good faith" at the end of the first sentence.

16.1. All time periods for performance under the Master Agreement and First Lease which have expired prior to the date hereof are hereby extended to a date measured from the date of this Amendment.

16.2. Hudson covenants and agrees to perform the tasks (individually a "Task") identified on Exhibit 3 annexed hereto (the "Task Schedule") on or before the dates set forth therefor on the Task Schedule. In the event Hudson fails to substantially perform a Task on or before the date set forth therefor on the Task Schedule, the Town, upon not less than sixty (60) days' notice to Hudson (and provided the Task has not been performed during such 60-day period), may terminate the Master Agreement. Subject to the foregoing, and excepting Lot 1.C in Block 294, with respect to which no improvement will be required to be constructed at any time, improvement of each individual Redevelopment Parcel for which Hudson has entered into a "Lease" will be completed within the periods provided for in the Master Agreement.

17. The Town hereby waives any rights or remedies that the Town may have under the Master Agreement and First Lease by reason of any breach or default in any of such terms, covenants or conditions of the Master Agreement and/or First Lease prior to and including the date hereof.

18. Hudson, and persons designated by Hudson, shall have the right and license, prior to entering into a Lease therefor to enter upon the Redevelopment Parcels for the purpose of making, at Hudson's cost and expense, surveys, measurements, tests, studies or other investigations with respect thereto, and perform such other work thereon in preparation for development, provided Hudson shall defend, indemnify and hold the Town harmless from and against any and all claims, actions, losses, costs, damages, expenses (including reasonable attorneys' fees) resulting from any negligent act or omission on the part of Hudson, its designees or their respective employees, agents and/or contractors; provided, however, Hudson shall not be liable for

any real or alleged diminution in the value of the Redevelopment Parcels resulting from the facts obtained during such investigations and studies.

19.1. Hudson and the Town will concurrently herewith enter into a Stipulation of Settlement (the "Stipulation"), in a form reasonably acceptable to counsel, dismissing the Town from the Action with prejudice and dismissing with prejudice all claims and counterclaims made by the Town against Hudson therein. Hudson hereby waives any claims Hudson has against the Town for contribution to the costs of environmental remediation of the so-called "Diamondhead" site, and/or the Redevelopment Parcels and the Municipal Redevelopment Parcels, under CERCLA, and/or under any other environmental laws or regulations, or common law (collectively, "Environmental Claims"). Hudson further agrees to defend, indemnify and hold harmless the Town against any judgments, claims, actions, damages, liability and expense, including reasonable attorney fees, to which the Town may be subject for Environmental Claims: **a)** by defendants now, or hereafter, named (whether as defendants, co-defendants, third or fourth party defendants) in the Action; or **b)** by such parties in such other action, litigation or other proceeding, that may arise out of, be related to, or otherwise facilitate, Hudson's development of the Diamondhead site and/or the Redevelopment Parcels and the Municipal Redevelopment Parcels, within which action damages or contributions are sought from the Town to defray the cost of environmental remediation of the Diamondhead site and/or the Redevelopment Parcels and the Municipal Redevelopment Parcels. The aforementioned waiver and indemnity shall be further memorialized in the Stipulation. The foregoing indemnity shall be in addition to the indemnities provided in Section 20. of the Master Agreement.

19.2. The Town shall, upon request of Hudson Meadows, assign all the Town's Environmental Claims, and/or actions for contribution from third parties for Environmental Claims that may be asserted by the Town, or that may be assertable against the Town, with respect to which Hudson provides waivers to the Town, and/or defense and indemnification to the Town pursuant to Section 19.1 of this Amendment. In the event Hudson's rights to lease and develop a Redevelopment Parcel are abandoned, surrendered or otherwise terminated, with respect to which Redevelopment Parcel waivers and/or defense and indemnification are due to the Town under Section 19.1 of this Amendment, then, in that event, the Town shall release Hudson from any obligation under Section 19.1 of this Amendment, with respect to such parcel, on a "nunc pro tunc" basis, effective as though Section 19.1 had never been applicable to such parcel; except to the extent of any compensation or contribution (net of costs of collection) that Hudson shall have secured pertaining to such parcel(s). Such abandonment, surrender or termination with respect to any one or more parcels shall not operate to discharge

Hudson of any other obligation to the Town under the Master Agreement or under this Amendment.

19.3 In the event of a permitted assignment, pursuant to Section 10. and/or Section 14. of this Amendment, of Hudson's right to Lease a Redevelopment Parcel(s) to a third party joint venture or other association, of which Hudson is a part, the purpose of which is the redevelopment of the applicable Redevelopment Parcel(s) and/or Municipal Redevelopment Parcel(s), Hudson may then cause such joint venture or other association to act as indemnitor to the Town pursuant to Section 19.1 of this Amendment and Hudson (except to the extent of its participation in such joint venture or association) shall be freed and relieved of any further liability thereunder.

19.4. The Stipulation will also include a waiver and termination of the requirement for Hudson Meadows to attract the development of a major league baseball stadium set forth in Order and Stipulation of Settlement, dated June 4, 1986, in United States District Court, Civil Action # 84-4056.

19.5. The Stipulation shall incorporate the terms of this Amendment. The Stipulation and this Amendment shall otherwise be subject to the terms of all other Consent Orders, Stipulations of Settlement, or Settlement Agreements, to which the Town and Hudson are parties, that were previously entered in the United States District Court, and/or in the Superior Court of New Jersey, pertaining to the Redevelopment Parcels.

20. As modified hereby, all of the terms, covenants and conditions of the Master Agreement and First Lease are hereby ratified and confirmed in all respects and shall remain in full force and effect.

21. The provisions of this Amendment to Lease and Master Leasing and Option Agreement shall bind and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

22.1 Hudson hereby waives, relinquishes and foregoes any and all claims to the purchase moneys, or other proceeds, to be paid to the Town by the HMDC, in conjunction with the HMDC's pending acquisition from the Town of certain parcels, within what is commonly known as the Kearny Marshlands, that are designated as part of Block 205 Lot 19 (to be formally subdivided); Block 286 Lots 30, 48, 50; and Block 287 Lots 4A, 7B, 18, 19, 20, 31, 33 on the tax map of the Town (the "HMDC Purchase Parcels"). Hudson hereby further waives, relinquishes and foregoes any right, or claim of right, to lease or develop the HMDC Purchase Parcels under the Master Agreement and this Amendment, or pursuant to any other source of right, or claim of right. With respect to Block 205 Lot 19, the foregoing waivers by Hudson shall not be

applicable to that portion of Block 205 Lot 19 outlined on the plan attached hereto as Exhibit 4 which is not being purchased by the HMDC and which is to be formally subdivided by the Town. Hudson agrees that it will execute such further memorializations of the foregoing waivers as the Town, or the HMDC, may reasonably request.

22.2 Hudson further agrees to waive, relinquish and forego any and all claims to the purchase moneys, or other proceeds, to be paid to the Town by the HMDC, in conjunction with the HMDC's pending acquisition from the Town of Block 286 Lot 16 on the tax map of the Town.

23. Within the Action, Hudson has raised certain allegations and arguments in support of Hudson's request for an order, disqualifying the Town Attorney appearing in the Action from further representing the Town, either in the Action, or with respect to other Town business of interest to Hudson. With the advice and consent of counsel for Hudson (including, but not limited to, counsel for Hudson, designated by Hudson in the Action as "Special Counsel"), Hudson hereby withdraws and relinquishes all claims for such disqualification of the Town Attorney, whether asserted or assertable in the Action, or in any other proceedings or forums. The Stipulation shall further memorialize Hudson's aforesaid withdrawal of its objections to the Town's representation.

24. The Town represents and warrants that the execution of this Amendment has been duly approved and the resolution attached hereto as Exhibit 5 has been duly adopted and enacted by the Town.

25. Town agrees to provide affidavits of title and such other documentation as may be reasonably and customarily requested by Hudson's title insurer.

26. This Amendment may be executed in counterparts each of which shall constitute an original. The Amendment shall be effective upon the execution of the last counterpart hereof.

27. To the extent of any conflict between the terms of this Amendment and the terms of the Master Agreement and/or First Lease, the terms of this Amendment shall supercede and control.

28. The Town and Hudson further agree to execute, acknowledge and deliver all such further documents or assurances, and cause to be done all such further acts as may at any time hereafter be reasonably required to implement the terms of the Master Agreement, the First Lease and this Amendment.

IN WITNESS WHEREOF, the Town and Hudson have caused this Amendment to Lease and Master Leasing and Option Agreement to be executed effective as of the day and year first above written.

Attest:

Name: DOREEN GALI
Town Clerk

TOWN OF KEARNY

By:
Name: Peter T. McIntyre
Mayor

Attest:

Name: Jerry Turco, Jr.
Title: Secretary

HUDSON MEADOWS URBAN RENEWAL DEVELOPMENT CORPORATION

By:
Name: Mimi Feliciano
Title: President

STATE OF NEW JERSEY
COUNTY OF HUDSON

BE IT RESOLVED this 9th day of November, 1999 personally appeared Peter J. McIntyre, Mayor of the Town of Kearny and he acknowledged under oath, to my satisfaction, that he signed and delivered the attached document as the voluntary act and deed of the Town of Kearny.

James P. Brune, Esq.
Attorney-at-Law of New Jersey

EXHIBIT 1-A

Block 205 Lot 19
Block 205 Lot 22
Block 284 Lot 29
Block 285 Lot 14
Block 285 Lot 15
Block 285 Lot 17
Block 286 Lot 4 (5-acre portion, per Settlement in Civil Action No.84-4056, United Stated District Court
Block 286 Lot 16
Block 286 Lot 47
Block 294 Lot 1-A
Block 294 Lot 1-C

EXHIBIT 1-B

To be Added to Master Agreement as Redevelopment Parcels

Block 205 Lot 24
Block 205 Lot 27
Block 205 Lot 29
Block 205 Lot 30

To be Released from Master Agreement

Block 284 Lot 29
Block 294 Lot 1-A

EXHIBIT 2
FIRST REDEVELOPMENT PARCEL

BEHAR SURVEYING ASSOCIATES, P.C
PROFESSIONAL LAND SURVEYORS
PROFESSIONAL PLANERS
200 MURRAY HILL PARKWAY
EAST RUTHERFORD, NEW JERSEY 07073
201-939-8170 FAX 933-0214

LEGAL DESCRIPTION - PROPOSED 5 ACRE LOT

BEGINNING AT A POINT, SAID POINT BEING 4 COURSES AND DISTANCES FROM THE INTERSECTION OF THE NORTHEASTERLY LINE OF BERGEN AVENUE AND THE CENTERLINE OF LANDS N/F ERIE LACKAWANNA RAILROAD (HARRISON KINGSLAND CONN. BRANCH) RUNNING (A)S 42 DEGREES 53 MINUTES 35 SECONDS E 440.87' ALONG THE SAID LINE OF BERGEN AVENUE THENCE (B) N 46 DEGREES 59 MINUTES 25 SECONDS E 605.58' THENCE (C) N 72 DEGREES 11 MINUTES 55 SECONDS E 291.57' THENCE (D) N 67 DEGREES 36 MINUTES 40 SECONDS E 491.80' TO SAID BEGINNING POINT RUNNING THENCE

1. N 25 DEGREES 17 MINUTES 30 SECONDS W 519.29' THENCE
2. N 78 DEGREES 10 MINUTES 57 SECONDS E 494.00' THENCE
3. S 11 DEGREES 49 MINUTES 03 SECONDS E 505.00' THENCE
4. S 78 DEGREES 10 MINUTES 57 SECONDS W 373.00' TO THE POINT OR PLACE OF BEGINNING.

NOTE- SAID DESCRIPTION DRAWN IN ACCORDANCE WITH DEED BOOK 3429 PAGE 848, ET SEQ., AND PLAN ENTITLED "PROPOSED FIRST STAGES OF 120.64 ACRE WAREHOUSE DEVELOPMENT" DONE BY GEORGE CASCINO, P.E., P.P. DATED SEPTEMBER 14, 1999. SAID LEGAL DESCRIPTION NOT BASED ON ACTUAL FIELD SURVEY.

Exhibit "3"
Task Schedule

TASK	PRE-CONDITION
Enter into Redevelopment Agreement with Hackensack Meadowlands Development Commission ("HMDC").	Within 6 months after Redevelopment Plan has been enacted by HMDC, and all appeal periods have expired.
Prepare new or updated economic and site feasibility studies.	Within 6 months after funding is committed for HMDC's (i) detailed scope of work and (ii) contributions under the Redevelopment Agreement (the "Commitment Date").
Prepare new or updated traffic studies.	Within 9 months after the Commitment Date.
Prepare new or updated geotechnical studies.	Within 1 year after the Commitment Date.
Submit environmental remediation plan.	Within 15 months after the Commitment Date.
Submit land-fill closure plan.**	Within 18 months after the Commitment Date.
Begin solicitation of financing and/or venture capital.	Within 2 years after the Commitment Date.
Begin solicitation of tenants.	Within 2 years after the Commitment Date.
Submit preliminary site plan/subdivision approval application.	Within 2-1/2 years after the Commitment Date.
Submit wetlands/Army Corps application for permits.**	Within 2-1/2 years after the Commitment Date.
Submit for sewer, DOT, erosion control, stormwater and additional permits.**	Within 3 years after the Commitment Date.

Solicit bids for land-fill closure.	Within 4 months after obtaining all zoning, site plan, subdivision, drainage, grading, environmental and wetland approvals; all variances and special use permits have been obtained; all utility connection, approvals, allocations and capacities have been obtained; and all appeal periods have expired (the "Approval Date").
Begin land-fill closure.**	The later of 6 months after the approval Date or 4 months after completion of containment wall by HMDC.
Solicit bids for environmental remediation.**	Within 6 months after the Approval Date.
Begin environmental remediation.**	The later of (i) 8 months after the Approval Date, (ii) 2 months after completion of containment wall by HMDC, or (iii) 1 month following finalization of contract for environmental remediation.
Begin clean-up, cutting and grading.	Within 6 months after completion of land-fill closure and environmental soils remediation and issuance of construction and building permits (the "Commencement Date").
Begin footings and foundations.	Within 2 months after the Commencement Date (subject to compaction of surcharge or dynamic compression).

* All timelines are subject to force majeure and other events beyond the control of Hudson Meadows Urban Renewal Development Corporation ("Hudson") including, but not limited to (i) moritoria, (ii) inclement weather or weather otherwise impairing any task, and (iii) approvals, permits, consents and the like required to be obtained from third parties.

** To be discussed and resolved with HMDC regarding timing and allocation of responsibility.

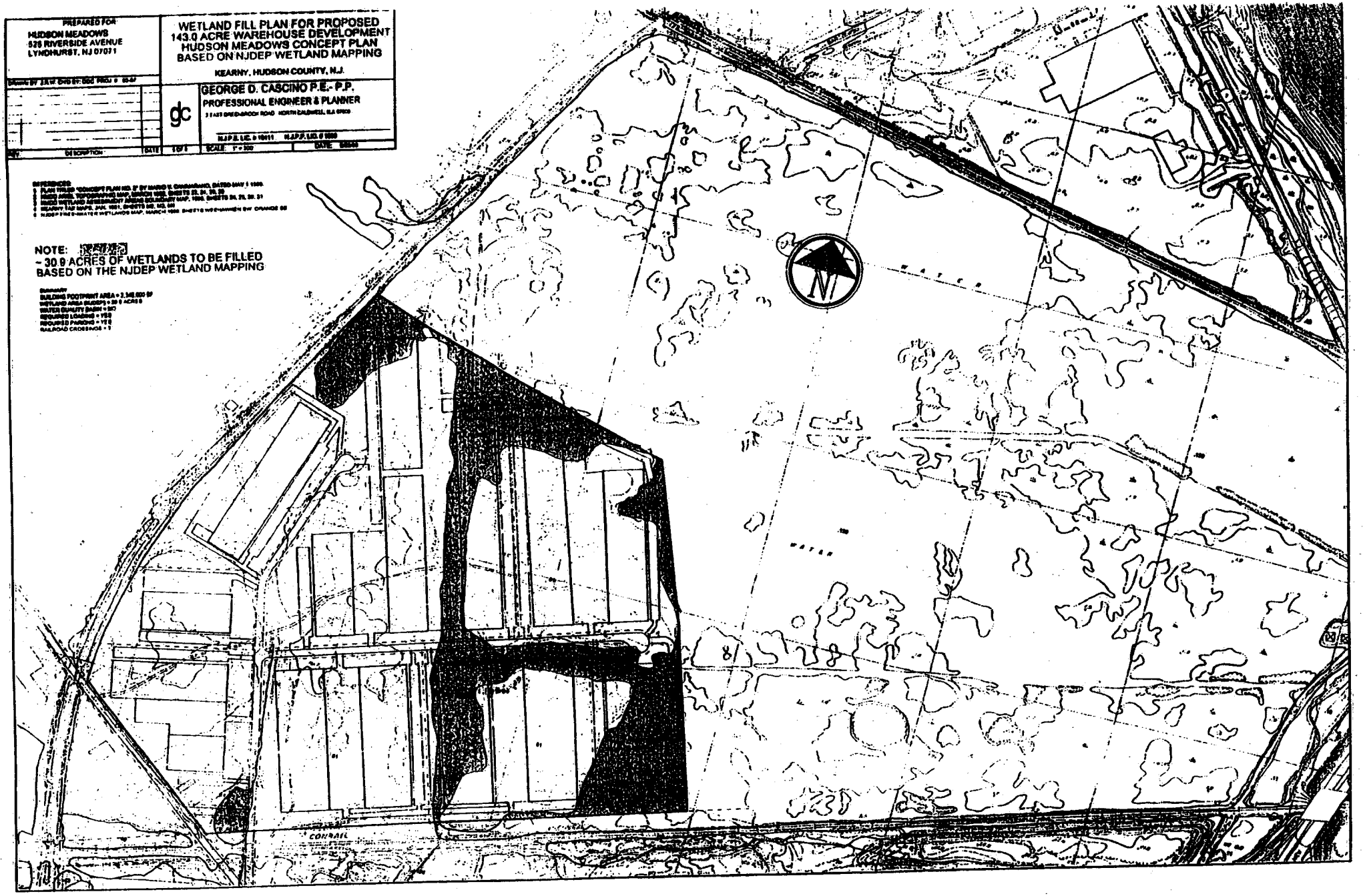


EXHIBIT 4
LOT 19 DEVELOPMENT AREA

EXHIBIT 5
RESOLUTION

EXHIBIT 5
RESOLUTION

TOWN OF KEARNY
COUNTY OF HUDSON
1999-(R)-365A

COUNCILMEMBER: Doyle

WHEREAS, Hudson Meadows Urban Renewal Corporation ("Hudson Meadows") has been prosecuting multi-party litigation in the United States District Court for the District of New Jersey, under the caption: Hudson Meadows Urban Renewal Corporation v. Hackensack Meadowlands Development Commission, et als., Civil Action No. 97-5727(JAG) ("the Action"), in which Hudson Meadows has joined the Town of Kearny, New Jersey ("the Town") as a party defendant;

WHEREAS within the Action, Hudson Meadows has asserted certain claims against the Town, including claims that the Town is in breach of that certain Master Lease and Option Agreement, dated August 8, 1979 ("the Master Agreement"), wherein the Town granted Hudson Meadows the option of leasing, as redeveloper, certain parcels of land owned by the Town referenced in the Master Agreement;

WHEREAS, the Town has asserted counterclaims in the Action, including claims for rescission of the Master Agreement;

WHEREAS Hudson Meadows has proposed settlement of the Action, through the entry of a form of agreement: amending the Master Agreement; dismissing the Action; and reaffirming the contractual relationship of the parties under the Master Agreement, subject to the exchange of additional considerations between the parties to be

stated in an amendment of the Master Agreement;

WHEREAS, pursuant to prior authorizing resolution of Council of the Town of Kearny ("the Council"), counsel for the Town have met from time to time with counsel and principals of Hudson Meadows for purpose of negotiating such a form of agreement in settlement of the Action;

WHEREAS, the Hackensack Meadowlands Development Commission ("HMDC"), in the exercise of its redevelopment powers pursuant to N.J.S.A. 13:17-20, has imparted to the Town and to Hudson Meadows, the HMDC's determination that a settlement of the Action, between the Town and Hudson Meadows, is both necessary and desirable in order to facilitate the H.M.D.C.'s contemplated exercise of its redevelopment powers with respect to certain lands subject to the Master Agreement, and in order to facilitate the HMDC's discretionary acquisition from the Town of certain parcels of Kearny Marshlands, for purpose of open space preservation ("the HMDC purchase");

WHEREAS in furtherance of the HMDC's aforesaid desire to promote and encourage settlement of the Action, the HMDC has sponsored a series of settlement conferences at the offices of the HMDC, which have from time to time been attended by the Mayor and by Members of the Council of the Town of Kearny, and the Town Business Administrator, as well as by counsel for the Town;

WHEREAS pertinent portions of the terms of settlement offered by Hudson Meadows have been reviewed on the Town's behalf by the

Tax Assessor of the Town, the Town real estate appraisal consultant, and the Town Engineer, as well as by other interested officials of the Town, in addition to general review by the Town Attorney as to the form of settlement agreement offered by Hudson;

WHEREAS, in culmination of the aforesaid negotiations, Hudson Meadows has executed the attached form of Amendment of the Master Agreement, providing for the settlement of the Action and the exchange of considerations recited therein, by way of restatement and clarification of the rights and responsibilities of the parties under the Master Agreement ("the Amendment"), in order that the parties might cease litigating and thereby facilitate and achieve the development of the parcels of land that are subject to the Master Agreement and the Amendment;

WHEREAS continued prosecution of the Town's defenses and counterclaims in the Action, would: **a)** subject the Town to additional litigation costs; **b)** contribute to delay of the development of the parcels subject to the Master Agreement and Amendment; **c)** delay the Town's realization of the benefits of improvements of said parcels; and **d)** further delay the consummation of the aforementioned HMDC purchase, and the Town's realization of the sale proceeds therefrom;

WHEREFORE, BE IT RESOLVED, by the Mayor and Council of the Town of Kearny, as follows:

1. That the Action be settled on the terms set forth in the

aforesaid Amendment annexed hereto;

2. That the Mayor shall be, and hereby is, authorized and charged with executing counterparts of the Amendment on behalf of the Town, along with such other documents contemplated therein, in order to implement the Amendment's terms and purposes; and

3. The Mayor, Town Business Administrator, Town Clerk, and all other appropriate officers, employees and agents of the Town, are hereby authorized and directed to do all things necessary and convenient to implement the Amendment, and the Master Agreement, and to initiate the municipal proceedings and actions contemplated therein, in settlement of the Action.

ADOPTED: November 8, 1999

I hereby certify that the foregoing Resolution was adopted by the Council on November 8, 1999.

Doreen Cali, Town Clerk

249387.1

MASTER LEASING AND OPTION AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.

TABLE OF CONTENTS

CLOSING DOCUMENTS

MASTER LEASING AND OPTION AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.
AND RELATED DOCUMENTS

CLOSING DATE: August 5, 1977

Document No.	Title
1	Master Leasing and Option Agreement (the "Master Agreement")
2	Schedule A to Master Agreement
3	Schedule B to Master Agreement
4	Exhibit 1 to Master Agreement
5	Exhibit 2 to Master Agreement
6	Exhibit 3 to Master Agreement
7	Exhibit 4 to Master Agreement
8	Exhibit 5 to Master Agreement
9	Exhibit 6 to Master Agreement
10	Lease Agreement

MASTER LEASING AND OPTION AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.

LIST OF SCHEDULES AND EXHIBITS

DESIGNATION	TITLE
Schedule A	Map of Redevelopment Area
Schedule B	List of Existing Encumbrances, etc.
Exhibit 1	Redevelopment Plan
Exhibit 2	Form of Financial Agreement
Exhibit 3	Form of Certificate of Completion
Exhibit 4	Form of Severance Lease
Exhibit 5	Form of Sublease Clause re Lessee's Duties to Maintain and Repair
Exhibit 6	Form of Sublease Clause re Lessee's Duty to Restore Destroyed Property

MASTER LEASING AND OPTION AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.

THIS AGREEMENT (the "Master Agreement"), made as of the 8th day of August, 1979, by and among THE TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the "Town"), and MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi").

W I T N E S S E T H

WHEREAS, the Town is the owner in fee simple of a tract of land, consisting of approximately 638.84± acres and lying within the municipal boundaries of the Town, which is more particularly described on the map annexed hereto as Schedule A and incorporated herein by this reference (the "Redevelopment Area"); and

WHEREAS, the Town is desirous of improving the Redevelopment Area for the purpose of increasing employment opportunities and tax ratables which will benefit the residents and inhabitants of the Town; and

WHEREAS, the Town has undertaken a redevelopment project for the proper utilization and redevelopment of the Redevelopment Area (the "Redevelopment Area Project") in order to facilitate its orderly commercial and industrial development, and to secure these ends finds it necessary to provide financial assistance in the form of tax abatement pursuant to the "Urban Renewal Corporation and Association Law of 1961," Chapter 40 of the Public Laws of 1961, N.J.S. 40:55C-40, et seq., as amended and supplemented (the "Fox-Lance Act"); and

WHEREAS, The Redevelopment Area Project is being undertaken in accordance with a redevelopment plan for the Redevelopment Area designated as the "Kearny Meadowlands Redevelopment Area Redevelopment Plan", a copy of which is annexed hereto as Exhibit 1, and is incorporated herein by this reference (the "Redevelopment Plan"); and

WHEREAS, under the Redevelopment Plan, an area within the Redevelopment Area, outlined in red on Schedule A hereto, which outline is incorporated herein by this reference (the "First Redevelopment Parcel") is designated for use as a warehousing, manufacturing or distribution center; and

WHEREAS, the Town intends to lease the Redevelopment Area to the Redeveloper (as hereinafter defined) pursuant to one or more leases, each relating to the redevelopment of a particular Redevelopment Parcel, and each substantially in the form of the agreement executed simultaneously herewith which relates to the leasing and redevelopment of the First Redevelopment Parcel, which is incorporated herein by this reference (the "First Lease"), with a view to preventing blight and blighting influences within the Redevelopment Area and to facilitate the redevelopment of this area in accordance with the purposes and goals of the Redevelopment Plan; and

WHEREAS, the Town presently desires to lease the First Redevelopment Parcel to the Redeveloper in accordance with the terms and conditions of the First Lease in order to permit the construction thereon by the Redeveloper of a complex consisting of at least 50,000 square feet of space for warehousing or manufacturing or distribution; and

WHEREAS, the Town has considered the Redeveloper's proposal for the redevelopment of the First Redevelopment Parcel; and

WHEREAS, the Town has further reviewed the Redeveloper's schematic site plan; and

WHEREAS, the Town is prepared to lease the First Redevelopment Parcel to the Redeveloper, and the Redeveloper is willing to lease the First Redevelopment Parcel from the Town and to refevelop the First Redevelopment Parcel, in each case in accordance with the terms of this Agreement and of the applicable Lease; and

WHEREAS, the Town believes that the leasing and redevelopment of the First Redevelopment Parcel, and of the Redevelopment Area, pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the Town, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Redevelopment Area Project has been undertaken and is being assisted;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

1. Definitions:

As used herein, each of the following terms shall have the meaning assigned to it, as follows:

a. "Commencement Date" of each Lease of each Redevelopment Parcel executed pursuant to this Agreement: as defined in Paragraph 4, subject, however, to the provisions of Paragraph 15.

b. "Completion" of any Improvement: issuance of a Certificate of Occupancy with respect thereto by the appropriate governmental body or agency.

c. "First Improvements": As defined in Paragraph 6c.

d. "First Lease": As defined in the Recitals, and more particularly in Paragraph 3c.

e. "First Project": the First Redevelopment Parcel and the First Improvements.

f. "First Redevelopment Parcel": As defined in the Recitals.

g. "Fox-Lance Act": As defined in the Recitals.

h. "HMDC": The Hackensack Meadowlands Development Commission, or any successor governmental body.

i. "Mimi": As defined in the Preamble.

j. "Impositions": As defined in Paragraph 5.

k. "Improvement" or "Improvements": the building or buildings and/or other related structures to be erected on any specifically identified Redevelopment Parcel.

l. "Land Improvements": As described in Paragraph 6b.

m. "Lease": A lease for redevelopment of a particular Redevelopment Parcel, executed pursuant to this Agreement, and substantially in the form of the First Lease, as more particularly described in Paragraph 3b.

n. "Leased Property": As defined in Paragraph 12.

o. "Lease Term": As defined in Paragraph 4.

p. "Lease Year": A period of twelve (12) calendar months beginning on the Commecement Date of the particular Lease, or on any anniversary thereof.

q. "Lessee": The entity which shall be the tenant under a Lease; such entity shall be either Mimi or a Permitted Assignee.

r. "Lessor": The entity which shall be the Landlord under a Lease; such entity shall either be the Town or a successor thereto.

s. "Lot": as the sense and circumstance require, an entire Redevelopment Parcel, or a specifically designated portion thereof referable to and part of a specific Unit, if the Project

referable to such Redevelopment Parcel is undertaken in Units.

t. "Master Agreement": This Agreement.

u. "Mortgage Loan": As defined in Paragraph 12.

v. "Optionor": The entity which shall have the right to exercise the option described in Paragraph 18; such entity shall be either Mimi or a Permitted Assignee.

w. "Permitted Assignee": Any person or entity to whom an assignment or transfer has been made in accordance with Paragraph 11.

x. "Permitted Assignment": Any assignment or transfer made in accordance with Paragraph 11.

y. "Project": an entire Redevelopment Parcel and all Improvements thereon; if any Project is undertaken in Units, the term means the totality of all such Units.

z. "Redeveloper": The entity which shall have the rights and duties of the Redeveloper with respect to any Redevelopment Parcel; such entity shall be either Mimi or a Permitted Assignee.

aa. "Redevelopment Area": As defined in the Recitals.

bb. "Redevelopment Area Project": As defined in the Recitals.

cc. "Redevelopment Parcel": A particular section of the Redevelopment Area, specifically numbered and identified and described as one or more Lots in one or more Building Permit applications, as the portion of the Redevelopment Area with respect to which a particular Improvement or related series of Improvements is proposed to be constructed, and which is the subject of a Lease.

dd. "Redevelopment Plan": As defined in the Recitals.

ee. "Severence Lease" or "Severance Leases": As defined in Paragraph 12.

ff. "Town": As defined in the Preamble.

gg. "Unit": A particular Lot and the related Improvement, specifically numbered and identified and described as such, in the same manner as a Lot is identified, if the Project of which it is a part is undertaken in Units.

2. Warranties of Title, etc.

In order to induce Redeveloper to enter into this Agreement, and to expend the sums of money for the redevelopment of the Redevelopment Area required hereunder, and intending Redeveloper to rely thereon, the Town hereby warrants and represents to the Redeveloper that:

a. (1) The Town is the sole owner in fee simple of, and has good and marketable title to, the Redevelopment Area, free and clear of any and all liens, encumbrances, equities, or claims, except those described in Paragraph 3 hereof, and except as shall be disclosed by restrictions of record, provided that no such restriction shall render the Town's title to the Redevelopment Area other than "good and marketable".

(2) For purposes of this Agreement, the Town's title to the Redevelopment Area shall be deemed to be "good and marketable" if a recognized reputable title insurance company authorized to do business in the State of New Jersey issues to the Town at the simultaneous execution of this Agreement and of the First Lease a standard New Jersey Realty Board form of title policy insuring the Town's ownership of the fee estate in the Redevelopment Area, and simultaneously issues to the Redeveloper a standard New Jersey Realty Board form of title policy insuring the Redeveloper's ownership of the only leasehold estate in the First Redevelopment Parcel (and also then issues a "title binder" evidencing a commitment to insure Redeveloper's ownership of the only leasehold estate in the balance of the Redevelopment Area, as of the date of execution of the First Lease) and each such policy (or binder, as the case may be) contains only the standard printed exceptions, and the amount of the premium for that policy is calculated at the issuing company's regular rates. If such a

policy is not obtainable, title to all or the affected portion of the Redevelopment Area (or to the First Redevelopment Parcel, as the case may be) shall be deemed not good and marketable, and Redeveloper will have no obligation to lease the affected portion of the Redevelopment Area (or the First Redevelopment Parcel, as the case may be) and may refuse to consummate the entire transaction contemplated by this Agreement, without penalty of any kind.

(3) Notwithstanding anything to the contrary in the foregoing, if a recognized reputable title insurance company authorized to do business in the State of New Jersey is willing to issue a policy to Redeveloper as the named insured, insuring Redeveloper's title to the leasehold estate in the subject Parcel, but at a premium based on a rate higher than its regular rate, and if the Town agrees to pay and does pay the amount by which the premium charged by the title insurance company exceeds one calculated at its regular rate, then, at Redeveloper's sole and exclusive option, Redeveloper may consummate the transaction as so modified.

b. Schedule B, annexed hereto and incorporated herein by this reference, contains a true and complete list of all existing encumbrances, conditions, rights, covenants, easements, restrictions, and rights-of-way, affecting the Redevelopment Area; the Town will not further encumber or restrict the use of all or any part of the Redevelopment Area after the date of execution of this Agremeent without the prior written consent of the Redeveloper.

c. No part of the Redevelopment Area is presently subject to any claim of the State of New Jersey as tidelands and the Town has heretofore obtained all riparian rights affecting title to the Redevelopment Area.

d. The Town will take all necessary steps to assure that each Redevelopment Parcel may be leased to Redeveloper for the purposes herein set forth, and may be redeveloped by Redeveloper

in accordance with the terms of this Agreement and of the applicable Lease.

e. The Redevelopment Area has been/or will be duly and properly declared "blighted" by the governing body of the Town in accordance with the applicable provisions of the Blighted Area Act, N.J.S.A. 40:55-21.1 et seq. and of the Fox-Lance Act.

f. The Town will take all necessary measures to assure the abatement of property taxes in accordance with the provisions of the Fox-Lance Act for all Improvements to be made by Redeveloper in the Redevelopment Area; without limiting the generality of the foregoing, the Town shall make the benefits of the Fox-Lance Act available to the fullest extent with respect to each Redevelopment Parcel leased from the Town pursuant to this Agreement, under the terms of the applicable Lease; for this purpose, the Town shall enter into a separate Financial Agreement with the Lessee/Redeveloper with respect to each Lease of a Redevelopment Parcel; each such Financial Agreement shall be in the form attached hereto as Exhibit 2, which is incorporated herein by this reference, and shall be executed no later than the first to occur of (i) the date which is sixty (60) days after the Commencement Date of the applicable Lease; or (ii) the date which is sixty (60) days after the date of written notice by the Lessee/Redeveloper to the Town stating that the Lessee/Redeveloper is ready, willing and able to enter into the applicable Financial Agreement, providing the necessary data required by the Fox-Lance Act, and requesting that the Town execute the same.

[redacted]

h. The Town recognizes that there is presently a 93± acre tract being used for dumping under an existing Lease which will expire October 31, 1985 and this Lease is subject thereto. The Town recognizes that this tract is included in the Master Lease covering the Redevelopment Area. Accordingly, the Town has included this acreage in this Lease.

i. The Town will take all necessary and appropriate measures to enable Mimi and the Town to secure a determination from the Federal Interstate Commerce Commission (the "I.C.C.") that all or any specified portion of the Redevelopment Area has the status of a "free zone" under the applicable laws and regulations, including, without limitation, co-operating fully with Mimi in connection with each application to the I.C.C. for such a ruling; provided, however that in fulfilling its obligation under this paragraph 2i, the Town may, but shall not be required to, undertake any action that would require it to incur legal fees.

j. The Town will take any and all other or further action necessary or appropriate to implement this Agreement or to effectuate its purposes, subject to paragraph 2h.

3. Leases of Redevelopment Parcels

a. Subject to all of the terms, covenants and conditions of this Agreement and of the applicable Lease, the Town hereby agrees to lease the First Redevelopment Parcel to the Redeveloper, and Redeveloper hereby agrees to lease the First Redevelopment Parcel from the Town, to have and to hold the same for the term and at the rent as hereinafter provided, SUBJECT TO:

(1) all existing encumbrances, conditions, rights, covenants, easements, restrictions and rights-of-way of record, which are listed on Schedule B, annexed hereto and incorporated herein by this reference; and

(2) applicable zoning, land use, and building laws, regulations and codes; and

(3) such matters as may be disclosed by a current inspection or survey; and

(4) building and restrictions specified in the Redevelopment Plan; and

(5) the conditions subsequently provided in Paragraph 14 hereof; and

(6) all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement.

b. (1) Insofar as possible, this Agreement specifies the terms of each Lease of a Redevelopment Parcel to be executed by the parties hereto in furtherance of the Redevelopment Plan (as, for example, in Paragraphs 8 through 17), and each such provision shall be included in each Lease executed pursuant to this Agreement as an integral part of such instrument.

(2) The First Lease shall be in the form of the instrument executed simultaneously herewith with respect to the redevelopment and leasing of the First Redevelopment Parcel which is incorporated herein by this reference.

(3) As more particularly set forth in Paragraph 18a, each subsequent Lease of a Redevelopment Parcel executed pursuant to this Agreement, shall be substantially in the form of the First Lease, but the references therein and the requirements thereof (concerning, e.g., the subject Redevelopment Parcel, the Project involved, the particular Redeveloper, and the applicable construction schedule) shall relate to the particular transaction.

c. The First Lease shall be executed simultaneously herewith. Each subsequent Lease of a Redevelopment Parcel shall be executed as provided in Paragraph 18c.

4. Lease Term

a. The Term of each Lease executed hereunder will be a period of seventy-five (75) years, beginning on the Commencement Date of that Lease.

b. The Commencement Date of each Lease of each Redevelopment Parcel executed pursuant to this Agreement shall

be the first day of the calendar month coinciding with or next following the last to occur of:

(1) The date which is six (6) months subsequent to the date of execution of that Lease; or

(2) The date of receipt by Redeveloper from HMDC, the U. S. Army Corps of Engineers, and every other governmental body having jurisdiction with respect thereto, of all permits and approvals which are necessary as a precondition to Commencement of physical construction of the first Unit of the Improvements proposed to be constructed on the subject Redevelopment Parcel, provided, however, that it is understood and agreed that, prior to such Commencement Date, Mimi and/or the Redeveloper shall be permitted to enter upon the subject Redevelopment Parcel for the purpose of doing test soil borings, engineering surveys, and similar preparatory work consistent with the uses contemplated by this Agreement, and that none of this activity will be deemed to be either the actual commencement of any construction activity, or the waiver of any requirement of this Paragraph 4b. for any purpose of the Lease of the subject Redevelopment Parcel or for any purpose of this Agreement.

5. Rental

a. Redeveloper agrees to pay to the Town during the Term of each Lease of a Redevelopment Parcel which is executed under this Agreement, including the First Lease:

(1)(A) initial rent at the rate of Four Thousand ($ 4,000.00) Dollars per calendar year, apportioned pro rata for any partial year. This initial rent shall be payable in quarterly installments, in advance, on the first day of January, April, July and October, without notice or demand, and without deduction, abatement or set-off for any reason whatsoever, except as in this Agreement specifically provided, beginning on the Commencement Date of the particular Lease, and ending on the date of issuance of a Certificate of Occupancy by both the Town and HMDC with respect

the Improvements on the particular Redevelopment Parcel; provided, however, that the total amount of such initial rent which shall be currently due and payable to the Town with respect to any particular calendar year shall not, under any circumstances, exceed Four Thousand ($4,000.00) Dollars; and provided, therefore, that if, at any time, the payment of initial rent shall be currently required under more than one Lease, then the total amount of such initial rent which is due and payable for such portion of such calendar year shall be apportioned among the various leased Redevelopment Parcels with respect to which such initial rent is then imposed, pro rata, on the basis of their respective acreages; and/or

(B) operating rent at the rate of One Thousand Five Hundred ($1,500.00) Dollars per acre per annum (which shall be apportioned pro rata) for the subject Redevelopment Parcel. Such rental shall be payable in quarterly installments, in advance, on the first day of January, April, July and October, during each year of the Lease Term of that Redevelopment Parcel, without notice or demand and without deduction, abatement or set-off for any reason whatsoever, except as in this Agreement specifically provided, commencing from the earlier of

(i)(a) in the case of the First Lease, the date which is two (2) years from the Commencement Date of the Lease Term thereof, and,

(b) in the case of each subsequent Lease, the date which is three (3) years from the Commencement Date of the Lease Term thereof, or

(ii) the date of issuance of a Certificate of Occupancy by both the Town and HMDC with respect to the Improvements on that Redevelopment Parcel; together with

(2) as additional rent thereunder, to be paid no later than the final due date therefor, without interest or penalty, all real estate taxes, assessments, occupancy taxes, sewer rents,

water charges and all other taxes and charges including all in lieu of tax payments (sometimes referred to collectively as "Impositions") levied, assessed, or imposed on, or attributable to, the particular Redevelopment Parcel, or arising from the use, occupancy or possession of the Improvements to be erected by Redevelopment on that Redevelopment Parcel. It is intended that each Improvement to be erected in the Redevelopment Area shall be the subject of a separate tax assessment and that a separate tax bill shall be issued for each Unit of each Redevelopment Project. Redeveloper reserves the right to contest any and all individual assessments for Impositions, pursuant to law, before the officer or body designated for the appeal of such matters; provided, however, that notwithstanding any such contest, Redeveloper shall pay the contested Imposition in the manner and on the dates provided therefor, unless such payment is deemed at law to operate as a bar to such contest, or would materially interfere with the prosecution of same (in which case, such nonpayment shall not constitute a default);

(3) Notwithstanding anything to the contrary herein, if any Lease Term hereunder commences by virtue of the occurrence (or anniversary) of an event described herein, and if such event (or anniversary) occurs on a date which is not the first day of a calendar month (and thus precedes the Commencement Date of the particular Lease Term) then so much of the foregoing described rentals as are otherwise then payable shall be due and payable for such fraction of a month, pro rata, as part of the next-due installment of such rent under such Lease, and, if such event (or anniversary) or such Commencement Date occurs on a date which is not the first day of a calendar quarter (and thus precedes the first rent payment date of the particular Lease Term) then so much of the foregoing described rentals as are otherwise then payable shall be due and payable for such fraction of a calendar quarter, pro rata, as part of the next-due installment of such rent under such Lease.

b. Notwithstanding anything to the contrary herein, the Town shall make the benefits of the Fox-Lance Act available to the fullest extent with respect to each Redevelopment Parcel leased from the Town pursuant to this Agreement, under the terms of the applicable Lease; for this purpose, the Town shall enter into a Financial Agreement with the Lessee/Redeveloper, in accordance with the provisions of Paragraph 2.f.

6. Construction of Improvements

a. Redeveloper agrees to use its best efforts through the term of this Agreement to redevelop the Redevelopment Area in order to generate employment and tax ratables for the Town by the Construction of such buildings and other facilities as are permitted by law.

b. Redeveloper agrees to substantially complete at its sole cost and expense within two (2) years of the Commencement Date of the First Lease, certain land improvements benefiting the Redevelopment Project (the "Land Improvements")(which shall include, but not be limited to, fill, roads, utility access lines, lights, etc.) having a value of at least One Hundred Fifty Thousand ($150,000.00) Dollars, and such Land Improvements shall be pursuant to schematic plans approved by the Town and shall be designed, installed and constructed so as to provide access to, and public utilities for, the Redevelopment Area.

c. No later than the second anniversary of the Commencement Date of the First Lease, Redeveloper agrees to construct on the First Redevelopment Parcel, leasable buildings (the "First Improvements"), in accordance with preliminary plans heretofore approved by the Town, as follows:

(1) one or more buildings having an aggregate in excess of 50,000 square feet.

d. (1) The construction of the First Improvements shall be commenced within twelve (12) months after the Commencement

Date of the First Lease, except as otherwise provided herein, and all of the First Improvements shall be substantially completed within twenty-four (24) months after the date of commencement of construction, as more particularly described in Paragraphs 4(b)(2) and 6(c).

(2) The construction of the Improvements on each subsequent Redevelopment Parcel shall be commenced within twelve (12) months after the Commencement Date of the Lease of that Redevelopment Parcel, except as otherwise provided herein, and subject to the provisions of Paragraph 18b.(1), all of the Improvements on such subsequent Redevelopment Parcel shall be substantially completed within thirty-six (36) months after the date of commencement of construction thereof, as more particularly described in Paragraph 4(b)(2).

(3) The construction period described in Paragraph 6(d)(1) or 6(d)(2), as the case may be, shall be extended for a period of time equal to delay for any of the causes set forth in Paragraph 15 hereof, or as a result of any pending or threatened administrative proceedings or litigation which, in Redeveloper's opinion, will interfere with its ability to begin or to complete construction of the particular Improvements involved.

e. The time for commencement of construction as set forth in subparagraph (d) of this Paragraph 6 shall be extended for the period of any delay resulting from any dispute concerning the construction plans.

7. Period of Duration of Covenant on Use.

The covenant pertaining to the uses of the Leased Property set forth in Paragraph 10 hereof shall remain in effect until December 31, 2008, and at that time such covenant shall terminate.

8. Commencement and Completion of Construction of Improvements.

The Redeveloper agrees for itself, its successors and

assigns, and every successor in interest to the Redevelopment Area, or any part thereof, and each Lease hereunder shall contain covenants on the part of the Lessee/Redeveloper, for itself and such successors and assigns, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of each Lot which is a part of the Redevelopment Area and is subject to such Lease, through the construction of the Improvements thereon, and that such construction shall in any event be begun within the period specified in Paragraph 6 hereof, as applicable to such Lot, and shall be completed within the period specified in such Paragraph 6, as so applicable. It is agreed, and each Lease hereunder shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, to the fullest extent permitted by law and equity, be binding for the benefit of the community and the Town and enforceable by the Town against the Redeveloper and its successors and assigns to or of the Redevelopment Area or any part thereof or any interest therein.

9. Certificate of Completion.

a. Promptly after completion of any Improvement on any portion of the Redevelopment Area, in accordance with those provisions of this Agreement and of the applicable Lease relating solely to the obligations of the Redeveloper to construct such Improvement (including the dates for beginning and completion thereof), the Town will furnish the Redeveloper with an appropriate instrument so certifying. Such certification by the Town shall be (and it shall be so provided in the applicable Lease and in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the applicable Lease with respect to the obligations of the Redeveloper, and its successors and assigns, to construct such

Improvement and the dates for the beginning and completion thereof.

b. Each certification provided for in this Paragraph 9 shall be in the form of Exhibit 3, annexed hereto and incorporated herein by this reference, and will be recorded in the office of the County Clerk for recording of deeds and other instruments pertaining to the Redevelopment Area. If the Town shall refuse or fail to provide any certification in accordance with the provisions of thisParagraph 9, the Town shall, within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the particular Improvement involved in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Town, for the Redeveloper to take or perform in order to obtain such certification.

c. If Redeveloper abandons the construction of any Improvement on any Leased Property previously undertaken by Redeveloper, or if Redeveloper fails to complete the construction of any Improvement in compliance with all applicable requirements of this Agreement and of the applicable Lease, then the Twon shall have the right, but not the obligation, to complete the construction thereof, without prejudice to any other right which the Town otherwise possesses under this Agreement and under the applicable Lease as a consequence of such default; provided, however, that if the Redeveloper was determined to have failed to complete construction of the Improvement in compliance with this Agreement and the applicable Lease for a specific reason or reasons stated by the Town to be the grounds for withholding a Certificate of Completion, as more particularly provided in the foregoing Paragraph 9.b., then the Town shall not be deemed to have properly completed construction of that Improvement unless the Town does so in full compliance with all applicable provisions of this Agreement and of the applicable Lease, and in a manner

which completely satisfies the Town's prior reasons for not furnishing the Redeveloper with the appropriate Certificate of Completion in accordance with the other provisions of this Paragraph 9.

d. Any dispute arising under this Paragraph 9 may be submitted by either party to arbitration to be held in the Town of Kearny in accordance with the then prevailing Construction Industry Arbitration Rules of the American Arbitration Association.

10. Restrictions Upon Use of Property.

a. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to or in the Redevelopment Area, or any part thereof, and each Lease hereunder shall contain covenants on the part of the Lessee/ Redeveloper for itself, and such successors and assigns, that the Redeveloper, and such successors and assigns, shall:

(1) Devote the Redevelopment Area to, and only to and in accordance with, the uses specified in the Redevelopment Plan;

(2) Not discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease, or rental, or in the use of occupancy of, the Redevelopment Area or any Improvement erected or to be erected thereon, or any part thereof;

(3) In the sale, lease, or occupancy of the Redevelopment Area,or any part thereof, not effect or execute any agreement, lease, conveyance, or other instrument, whereby the Redevelopment Area, or any part thereof, is restricted upon the basis of race, color, creed, religion,ancestry, national origin, sex or marital status; and

(4) Comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, sex or marital status.

b. It is intended and agreed, and each Lease shall

so expressly provide, that the agreements and covenants provided in Subparagraph a. of this Paragraph 10 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Town and any successor in interest to the Redevelopment Area, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest to the Redevelopment Area, or any part thereof or any interest therein, and any party in possession or occupancy of the Redevelopment Area or any part thereof. It is further intended and agreed that the agreement and covenant provided in Subparagraph a.(1) of this Paragraph 10 shall remain in effect for the period of time, or until the date, specified or referred to in Paragraph 7 hereof (at which time such agreement and covenant shall terminate) and that the agreements and covenants provided in Subparagraphs a.(2), (3) and (4) of this Paragraph 10 shall remain in effect without limitation as to time: Provided, that such agreements and covenants shall be binding on the Redeveloper itself, each successor in interest to the Redevelopment Area, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Redevelopment Area or part thereof. The terms "uses specified in the Redevelopment Plan" and "land use" referring to provisions of the Redevelopment Plan, or similar language, in this Agreement shall include the land use and all building and other requirements or restrictions of the Redevelopment Plan pertaining to such land.

c. In amplification of, and not in restriction of, the provisions of this Paragraph 10, it is intended and agreed that the Town and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Subparagraph a. of this Paragraph 10 both for and in their own right and also for the purposes of protecting the interests of the community and the

other parties, public or private, in whose favor or for whose benefit such agreements and covenants ahve been provided. Such agreements and covenants shall be in force and effect, without regard to whether the Town has at any time been, remains, or is, an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Town shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiary of such agreement or covenant may be entitled.

11. Prohibitions Against Assignment and Transfer; Permitted Assignments and Transfers; Permitted Assignees and Transferees.

a. Because of the importance of the redevelopment of the Redevelopment Area to the general welfare of the community and the public aids that have been made available by law and for the purpose of making such redevelopment possible, the Redeveloper represents and agrees that each Lease by Redeveloper of the Redevelopment Area or any part thereof, and each other undertaking of Redeveloper pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Redevelopment Area and not for speculation in land holding.

b. The Redeveloper further represents and agrees for itself and its successors and assigns, that:

(1) Except only

(A) by way of security for, and only for (i) the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Area, or any part thereof, to perform its obligations under this Agreement with respect to making the Improvements (including Land Improvements), or (ii) any other purpose authorized by this Agreement, or

(B) as to any individual part of the Redevelopment Area as to which the Improvements to be constructed thereon have been completed, and which, by the terms of this Agreement, the Redeveloper is authorized to convey or lease as such Improvements are completed, or

(C) as to any individual part of the Redevelopment Area (i) as to which the Improvements proposed to be constructed or completed thereon are to be built or completed by a redeveloper having a "substantial identity of interest" with Mimi, (that is at least more than fifty (50%) per cent of the voting capital stock or general partnership of such redeveloper owned beneficially, whether outright, in trust, or otherwise, by some or all of the persons who own Mimi, and (ii) which by the terms of this Agreement, the Redeveloper is authorized to convey or lease in order to effectuate the completion of such Improvements in accordance with this Agreement,

the Redeveloper (except as so authorized) has not made or created, and will not, prior to the proper completion of the Improvements, as certified by the Town, make or create, or suffer to be made or created, any total or partial lease, assignment, conveyance, or sublease, or any trust or power, or transfer, in any other mode or form, of or with respect to, this Agreement, or the applicable Lease, or the Redevelopment Area, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Town; provided, however, that:

(D) prior to the issuance by the Town of the certificate provided for in Paragraph 9 hereof as to completion of construction of the Improvements, the

Redeveloper may enter into an agreement to sublease, lease, assign, or otherwise transfer, the Redevelopment Area, or any part thereof, or interest therein, provided, further, that such disposition may itself be made:

(i) at any time after such transfer agreement is entered into,if the transferee is a redeveloper with whom Mimi has a "substantial identity of interest" (as described above); or

(ii) only after issuance by the Town of the certificate provided for in Paragraph 9 hereof as to completion of construction of the Improvements, if the transferee is any person other than a person described in the foregoing subparagraph (i), provided, finally, that, in this latter case, the applicable transfer agreement shall provide that no payment of or on account of the purchase price or rent (other than a deposit) for the Redevelopment Area, or the part thereof or the interest therein to be so transferred, may be made, prior to the issuance of such certificate;

(E) after the issuance by the Town of the certificate provided for in Paragraph 9 hereof as to completion of construction of the Improvements, the Redeveloper may enter into an agreement to sublease, lease, assign, or otherwise transfer, the portion of the Redevelopment Area covered by such certificate, or any subdivision thereof, or interest therein, to any perosn, and such disposition may itself be made at any time after such transfer agreement is entered into.

(2) The Town shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

(A) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Town, necessary and adequate to fulfill the obligations under-

taken in this Agreement and in the applicable Lease by the Redeveloper (or, if the transfer is of or relates to part of the Redevelopment Area, such obligations to the extent that they relate to such part), provided, however, that, for this purpose, it is hereby agreed that a redeveloper with whom Mimi has a "substantial identity of interest" (as described) shall be deemed to satisfy the requirements of this provision.

(B) Any proposed transferee, by instrument in writing satisfactory to the Town and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Town, have expressly assumed all of the obligations of the Redeveloper under this Agreement and under the applicable Lease and shall have agreed to be subject to all of the conditions and restrictions to which the Redeveloper is subject (or, if the transfer is of or relates to part of the Redevelopment Area, such obligations, conditions, and restrictions to the extent that they relate to such part).

(C) There shall be submitted to the Town for review all instruments and other legal documents involved in effecting the transfer; and, if approved by the Town, its approval shall be indicated to the Redeveloper in writing.

(D) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper (and Mimi, as appropriate) of the Redevelopment Area (or allocable to the part thereof or interest therein transferred) and of any Improvements (including, for this purpose, any Land Improvements made pursuant to Paragraph 6b) thereon or allocable thereto; it being the intent of this provision to preclude assignment of this Agreement or of the applicable Lease or any transfer of any part of the Redevelopment Area for profit prior to the completion of the Improvements thereon and to provide that if any such assignment or transfer is made (and is not cancelled), the Town shall be entitled to increase the rental therefor to the Redeveloper by the amount

that the consideration payable for the assignment or transfer is made (and to provide that if any such assignment or transfer is made (and is not cancelled), the Town shall be entitled to increase the rental therefor to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this Paragraph 11b. (2) (D), and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the Town.

(E) The Redeveloper and its transferee shall comply with such other conditions as the Town may find desirable in order to achieve and safeguard the purpose of the Redevelopment Plan.

12. Mortgage Financing; Rights of Mortgagee (Including Right to Cure Default or Breach by Redeveloper.

a. (1) Prior to the completion of any Improvement, as certified by the Town, neither the Redeveloper nor any successor in interest to the Lot to which such Improvement is related or any part thereof or interest therein (the "Leased Property") shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien thereon, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or to attach to that leased Property, except for the purpose of obtaining

(A) funds only to the extent necessary for making the particular Improvement (including related Land Improvements), and

(B) such additional funds, if any, in an amount not to exceed the rental to be paid by the Redeveloper to the Town prior to completion of construction of such Improvement.

(2) The Redeveloper (or successor in interest) shall notify the Town in advance in writing of any financing secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Leased Property or any part thereof, and in any event, it shall promptly notify the Town of any encumbrance or lien that has been created on or attached to the Leased Property, whether by voluntary act of the Redeveloper or otherwise.

(3) For the purposes of such mortgage financing as may be made pursuant to this Agreement, the Leased Property may,

at the option of the Redeveloper (or successor in interest), be divided into several parts or parcels.

(4) Anything contained herein to the contrary notwithstanding, in order to meet the terms, conditions and provisions required to secure any mortgage loan providing for the advancing of funds either for temporary or construction financing or for permanent financing with respect to a Redevelopment Parcel (or Lot), or the related Improvement(s) (including related Land Improvement(s)), or both, which constitute a particular Project (or any Unit thereof) (a "Mortgage Loan"), Redeveloper and the Town further agree, for the benefit and protection of the holder of a Mortgage Loan, provided that Redeveloper has given the Town notice of such Mortgage Loan, that:

(A) Redeveloper will keep, observe and perform each and every provision of this Agreement and do every other act and all things required by law to keep and continue this Agreement in full force and effect for the full period provided for herein except as may otherwise be agreed to by the holder of the Mortgage Loan;

(B) The Town and Redeveloper will make no agreement expressly, impliedly or by conduct serving to modify, alter, add to, terminate, or delete, any provision of this Agreement, and will exercise no option or right hereunder unless Redeveloper has previously obtained and furnished to the Town the written consent of the holder of the Mortgage Loan;

(C) If there is any default by the Redeveloper hereunder, and if such default has not been waived by the Town and has not been cured (or, if appropriate, the curing of such default has not commenced) by Redeveloper (or Mimi, or the Permitted Assignee involved in such default, as the case may be) after due notice hereof, within the period therefor stated in this Agreement, the Town agrees that before taking any step which it may then be

entitled to take, it will at that time first notify the holder of the Mortgage Loan thereof and then provide a reasonable opportunity to cure the same in light of the nature of the default and the available means to correct it, but in any event shall allow not less than thirty (30) days from the date of such notice to the Mortgagee of such default, and, if and to the extent that the Mortgagee cures any such default, or causes the same to be cured, Mortgagee shall be subrogated to the rights of the Town hereunder and under the applicable Lease, and shall have the right, but not the duty, to attorn to the position of the Redeveloper hereunder and under the applicable Lease and under the applicable Financial Agreement, as more particularly set forth elsewhere in this Paragraph 12;

(D) All the terms and provisions of the Redevelopment Projects Mortgage Loan Act of 1967 (N.J.S.A. 55:17-1 to 55:17-11) shall be made a part of and included herein with like effect as though recited at length;

(E) No waiver, election, acquiescence, estoppel or consent on the part of or against either party hereto shall affect or be binding upon the holder of the Mortgage Loan unless the Redeveloper has obtained and furnished to the Town the prior written consent of the holder of the Mortgage Loan; and

(F) Nothing in this Agreement shall be construed in any way which would adversely affect the right of the Town to receive the contractual payments and other substantive rights to which it may be entitled under this Agreement, it being the primary intention hereof that all of the terms, conditions and provisions hereof shall be and remain in full force and effect for the benefit and protection of the holder of the Mortgage Loan, notwithstanding any default or breach by the Redeveloper, its successors or assigns, so long as the Town receives, whether from the Redeveloper or from its lawful transferee or the holder of the Mortgage Loan, its subsidiary, nominee or assignee, the performance to be provided to it.

b. Notwithstanding any provision of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any Mortgage Loan authorized by this Agreement (including any such holder who obtains title to the Leased Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (1) any other party who thereafter obtains title to the Leased Property or such part from or through such holder or (2) any other purchaser at foreclosure sale other than the holder of the Mortgage Loan itself) shall in no wise be obligated by the provisions of this Agreement to construct or to complete the particular Improvements related to such portion of the Redevelopment Area or to guarantee such construction or completion; nor shall any covenant or any other provision in the applicable Lease be construed so to obligate such holder; provided, that nothing in this Paragraph or any other Paragraph or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Leased Property or any part thereof to any use, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Redevelopment Plan, this Agreement, or the applicable Lease.

c. Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Agreement, the Town shall at the same time forward a copy of such notice or demand to each holder of any Mortgage Loan authorized by this Agreement at the last known address of such holder shown in the records of the Town, and also to Mimi, if Mimi is not then the Redeveloper; provided, however, that the forwarding to the mortgagee of a copy of a notice or demand to the Redeveloper, pursuant to this Paragraph 12c., shall not constitute the giving of the notice or demand required by Paragraph 12a.(4) (C).

d. (1) After any breach or default referred to in the foregoing Paragraph 12c., each such holder shall (insofar as the rights of the Town are concerned) have the right, at its option, to cure or remedy such breach or default (to the extent that it relates to the part of the Redevelopment Area covered by its Mortgage Loan) and to add the cost thereof to the Mortgage Loan.

(2) Notwithstanding anything to the contrary in the foregoing, if the breach or default is with respect to construction of the Improvements on such portion of the Redevelopment Area, nothing contained in this Paragraph or any other Paragraph of this Agreement shall be deemed to permit or authorize or require such holder, either before or after foreclosure or action in lieu thereof, to undertake to continue the construction or completion of such Improvements (beyond the extend necessary to conserve or protect Improvements or construction already made) without first having expressly assumed the obligation to the Town to complete, in the manner provided in this Agreement and in the applicable Lease, the Improvements on the Redevelopment Area or the part thereof to which the lien or title of such holder relates; provided, however, that if such holder does so undertake to continue the construction or completion of such Improvements (beyond the extent necessary to conserve or protect Improvements or construction already made), then it shall have the right, but not the duty, to do so by transferring all of its rights hereunder and under the applicable Lease to an entity which is qualified under the provisions of the Urban Renewal Corporation and Associations Law of 1961, N.J.S. 40:55C-20, et seq., as amended and supplemented, and which owns no other project at the time of such transfer. If any holder of any Mortgage Loan so transfers its rights hereunder, the transferee entity shall be entitled to the full benefits of the tax abatement previously granted to the Redeveloper pursuant to the Fox-Lance Act with respect to the Leased Property, to the extent that the Redeveloper would then have been if no default had occurred.

(3) Any such holder or any such transferee of any such holder who shall properly complete the Improvements relating to the Redevelopment Area or applicable part thereof shall be entitled, upon written request made to the Town, to a certification or certifications by the Town to such effect in the manner provided in Paragraph 9 hereof and any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or revesting of title to the Redevelopment Area that the Town shall have or be entitled to because of any failure of Mimi or the Redeveloper or any successor in interest to the Redevelopment Area, or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts or parcels of the Redevelopment Area, or because of any other default in or breach of this Agreement or the applicable Lease, by Mimi, the Redeveloper, or such successor, shall not apply to the Lot or Parcel of the Redevelopment Area to which such certification relates.

(4) Any such holder or any such transferee of any such holder who shall cure or remedy any breach or default which is referred to in the foregoing Paragraph 12d(1) and which is not within the scope of the foregoing Paragraphs 12d(2) or (3) shall be entitled to the full benefits of the tax abatement previously granted to the Redeveloper pursuant to the Fox-Lance Act with respect to the Leased Property, to the same extent that the Redeveloper would then have been if no default had occurred.

e. The Town shall not be required to subordinate its interest in the Redevelopment Area to that of any lender of any Mortgage Loan who provides financing to Redeveloper for Improvements (and/or Land Improvements) and/or facilities on all or any part of the Redevleopment Area; however, if any such mortgagee requires an instrument of the type commonly known as a "Severance Lease", then the Town agrees to execute such instrument, which shall be in the form of the instrument which is annexed hereto as Exhibit 4 and is incorporated herein by this reference.

13. Remedies.

a. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms and conditions, by any party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, shall commence to cure the same within ninety (90) days after receipt of such notice. Subject to the provisions of Paragraph 12, if such action is not taken or is not diligently pursued, or if the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

b. If at any time during the term of this Agreement the Town does not tender a Lease of so much of the Redevelopment Area as is then to be leased to the Redeveloper, and possession thereof, in the manner and condition, and by the date, provided in this Agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Redeveloper, then Mimi:

(1) may bring an action in the Superior Court of New Jersey for specific performance, to cause the Town to fulfill its obligations hereunder; or

(2) may regard this Agreement as terminated as a result of such breach, and, in that case, Mimi shall give written notice thereof to the Town, and shall have no further obligation or liability to the Town thereafter, and the Town shall pay to Mimi as damages, an amount equal to the sum of (A) the amount of the "Lessee's Share" to which Mimi and/or the Redeveloper would

then be entitled under Paragraph 24(b) (2) (ii) (C) hereof, if (i) Mimi and/or the Redeveloper were then the Lessee of the portion of the Redevelopment Area then subject to the option described in Paragraph 18 under a Lease whose Lease Term commenced on the date of such breach of this Agreement by the Town, and which provided for the payment of rent by the Redeveloper to the Town at the same rate per acre per month as is contained in the First Lease; and (ii) that portion of the Redevleopment Area was duly condemned by the appropriate authority on the first day of the Lease Term of such Lease, and the amount of the condemnation award required to be allocated between such Lessor and such Lessee was equal to the then fair market value of such portion of the Redevelopment Area, free and clear of the restrictions of this Agreement; and (B) the payments theretofore made by Mimi pursuant to Paragraph 18e which are referable to such portion of the Redevelopment Area (to the extent not included in the amount described in the preceding clause (A)); after such damages have been paid, the Town shall have no further obligation or liability to Mimi; or

(3) may pursue any and all other remedies then available to it, at law, or in equity, or both.

c. Subject to the provisions of Paragraph 12, if, prior to the leasing of any Redevelopment Parcel to the Redeveloper, and in violation of this Agreement or of the applicable Lease:

(i) Mimi or the Redeveloper (or any successor in interest) assigns or attempts to assign this Agreement or the applicable Lease or any rights therein or in the Redevelopment Area or any part thereof; and

(ii) if any default or failure referred to in sub-paragraph (i) of this Paragraph 13c. shall not be cured within ninety (90) days after the receipt by the Redeveloper and Mimi of written demand by the Town addressed to the Redeveloper (and, if appropriate, to Mimi, and/or to each Permitted Assignee involved in such default or failure),

then any Lease involved in such default or failure, and any rights of the Redeveloper, or of any Permitted Assignee, in such Lease, shall, at the option of the Town, be terminated by the Town, and neither the Redeveloper (or the Permitted Assignee) nor the Town shall have any further rights against or liability to the other under this Agreement or under the applicable Lease with respect to the Leased Property involved in such default or failure, and such termination shall be deemed to be a termination of exeption from real property taxation as provided in the applicable Financial Agreement.

14. Revesting Possession in Town Upon Happening of Event Subsequent to Leasing to Redeveloper, and (i) Prior to Completion of Improvement or (ii) Subsequent to Completion of Improvement.

a. If, subsequent to the leasing of any Redevelopment Parcel to the Redeveloper and prior to the completion of the Improvement relating to such part of the Redevelopment Area, as certified by the Town:

(1) the Redeveloper (or successor in interest) shall default in or violate its obligations with respect to the construction of such Improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied, within three (3) months, (six (6) months, if the default is with respect to the date for completion of such Improvements) after written demand by the Town to do so; or

(2) the Redeveloper (or successor in interest) shall fail to pay real estate taxes or assessments on that Redevelopment Parcel or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement,or shall suffer any levy or attachment to be made, or any materialmen's or mechanics'lien, or any other unauthorized encumbrance or lien, to attach and such taxes or assessments shall not have been paid, or the encumbrance or lien removed

or discharged, or provision satisfactory to the Town made for such payment, removal, or discharge, within ninety (90) days after written demand by the Town to do so; or

(3) there is, in violation of this Agreement or the applicable Lease, any transfer of that Redevelopment Parcel or any part thereof, and such violation shall not be cured within ninety (90) days after written demand by the Town to the Redeveloper to do so;

then, subject to the provisions of Paragraph 12, the Town shall have the right to re-enter and to take possession of that Revelopment Parcel and to terminate (and revest in the Town) the estate conveyed by the Lease thereof to the Redeveloper, it being the intent of this provision, together with other provisions of this Agreement, that the leasing of any Redevelopment Parcel to the Redeveloper shall be made upon, and that each Lease shall contain, a condition subsequent to the effect that if any default, failure, violation, or other action or inaction by the Redeveloper specified in subsection (1), (2) or (3) of this Paragraph 14a occurs, then the failure on the part of the Redeveloper to remedy, end, or abrogate, such default, failure, violation or other action or inaction, within the period and in the manner stated in such sub-divisions, shall give the Town, at its sole option, the right to declare a termination in favor of the Town of all the rights and interests in and to that Redevelopment Parcel conveyed by the Lease thereof to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and any assigns or successors in interest to and in that Redevelopment Parcel, shall revert to the Town; provided, that such condition subsequent and any revesting of title as a result thereof in the Town:

(A) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any Mortgage Loan authorized by this Agreement or the applicable Lease for the protection of the holder of such Mortgage Loan; and

(B) shall not apply to any individual Lot or Parcel of the Redevelopment Area (or, in the case of a Lot or Parcel leased, the leasehold interest): (i) with respect to which the Improvement to be constructed has been completed in accordance with this Agreement and for which a certificate of completion has been issued as provided in Paragraph 9; or (ii) which is not part of the Redevelopment Parcel which is the subject of such revesting of title.

b. (1) Upon the revesting in the Town of title to any Redevelopment Parcel or any part thereof as provided in subsection (a) of this Paragraph 14, the Town shall, pursuant to its responsibilities under New Jersey law, use its best efforts to resell that Redevelopment Parcel or part thereof (or to re-lease the same pursuant to a lease and redevelopment agreement similar to the Lease under which the Redeveloper had defaulted) (in each case, subject to such mortgage liens and leasehold interests as in subsection (a) set forth and provided) as soon and in such manner as the Town shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Town) who will assume the obligation of making or completing the Improvements or such other improvements in the stead as shall be satisfactory to the Town and in accordance with the uses specified for that Redevelopment Parcel or part thereof in the Redevelopment Plan.

(2) Upon such resale of such Redevelopment Parcel or part thereof, the proceeds thereof shall be applied:

(A) First, to reimburse the Town, for all costs and expenses incurred by the Town, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of that Redevelopment Parcel or part thereof (but less any income derived by the Town from that Redevelopment or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to that Redevelopment Parcel or part thereof (or, if the Redevelopment Parcel is exempt from taxation or assessment or such charges during

the period of ownership thereof by the Town, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the Town assessing official) as would have been payable if the Redevelopment Parcel were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Redevelopment Parcel or part thereof at the time of revesting title thereto in the Town or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Redevelopment Parcel or part thereof and any amounts otherwise owing the Town by the Redeveloper and any successor or transferee; and

(B) Second, to reimburse to Mimi and the Redeveloper, as their interests shall appear, and any respective successor or transferee, up to an amount equal to the amount, if any, by which (i) the sum of (a) the purchase price paid by Mimi for the option to lease that Redevelopment Parcel (or allocable to the part thereof revested in the Town) and (b) the cash actually invested by Mimi and/or the Redeveloper in making any Improvement on (or Land Improvement with respect to) that Redevelopment Parcel (or allocable to the part thereof revested in the Town) exceeds (ii) any gains or income withdrawn or made by Mimi or Redeveloper from this Agreement and refereable to that Redevelopment Parcel (or allocable to the part thereof revested in the Town). Any balance remaining after such reimbursements shall be retained by the Town as its property.

(3) Upon such re-leasing of such Redevelopment Parcel or part thereof, the proceeds thereof shall be used and applied as set forth in Paragraph 14c.(8).

c. (1) If, subsequent to the leasing of any Redevelopment Parcel to the Redeveloper and subsequent to the completion of the Improvement relating to such part of the Redevelopment Area, as certified by the Town.

(A) the Redeveloper does not pay the rent due when

and as required to do so pursuant to the terms of the applicable Lease, and such default or failure is not cured within ninety (90) days after written demand by the Town to the Redeveloper; or

(the Redeveloper is in default in the performance of any obligation imposed on Redeveloper by this Agreement or the applicable Lease, and Redeveloper has not diligently commenced to cure such default or failure within ninety (90) days after written demand by the Town to the Redeveloper,

then, subject to the provisions of Paragraph 12, the Lease involved in such default or failure, and any rights of the Redeveloper, or of any Permitted Assignee, in such Lease, shall, at the option of the Town, be terminated by the Town, without further notice to the Redeveloper, and the estate conveyed by such Lease shall thereupon be revested in the Town.

(2) If the Town so elects, but not otherwise, the applicable Lease shall not terminate, although all rights of Redeveloper to the possession of the Leased Property shall be terminated.

(3) Upon the termination of the Redeveloper's right to possession of the Leased Property, regardless of whether the applicable Lease shall also then be terminated, the Redeveloper shall surrender possession of the Leased Property immediately, and shall be deemed to have granted to the Town, and the Town shall thereupon have, subject to the provisions of Paragraph 12, full and free license to re-enter into and on the Leased Property or any part thereof, and to repossess the Leased Property or any part thereof with or without process of law and to expel and to remove Redeveloper or any other person or entity who may be occupying the Leased Property or such part thereof as a successor to Redeveloper; provided, however, that if Redeveloper, as landlord, shall have entered into a sublease with another person or entity,

as tenant, and if such tenant shall not then be in default under the provisions of its lease, then the Town shall succeed to the rights and obligations of Redeveloper as landlord under that Lease, and the rights of the tenant thereunder shall remain undisturbed, so long as such tenant thereupon and thereafter complies with the terms of its lease, treating the Town or its designated successor as landlord.

(4) The Town may use such force in connection with a permitted re-entry and the removal of Redeveloper and of any other person who may then be removed pursuant to the terms of this Paragraph 14c, as may reasonably be necessary for that purpose, subject, however, to the provisions of Paragraph 12.

(5) Any permitted re-entry by the Town shall be made without waiving or postponing any other right which the Town may then have against Redeveloper.

(6) Any permitted re-entry shall be made without prejudice to any right or remedy conferred by statute or common law that might otherwise be used by the Town in connection with recovering arrears in rent or in seeking compensation for breach of any term or condition of this Agreement or of the applicable Lease.

(7) No permitted re-entry, repossession, expulsion, or removal, whether by direct action of the Town or through legal proceedings instituted for that purpose, shall in and of itself terminate this Agreement or the applicable Lease, or release Redeveloper from any liability for the payment of any rent then required to be paid by the applicable Lease.

(8) (A) Notwithstanding anything to the contrary in the foregoing provisions of this Paragraph 14c, if the Town does re-enter the Leased Property, and does remove the Redeveloper, as hereinbefore permitted, whether or not this Agreement or the

applicable Lease is then completely or partially terminated, the Town must then use its best efforts to minimize any cost, expense or loss attendant on or resulting from such action by it, including, without limitation, leasing or reletting the Leased Property to one or more tenants satisfactory to the Town for the best rent, terms and conditions that the Town may then obtain. The acceptance of any tenant or the making of any lease by the Town shall be conclusive evidence of the making of all determinations necessary to an effective approval thereof by the Town.

(B) If any such permitted re-entry and reletting occurs, the Town shall thereupon and thereafter use and apply any rent received by the Town as the successor to the Redeveloper as follows:

(i) Payment of the costs of maintenance and operation of the Leased Property, including debt service and including reasonable compensation to the Town and its agents, attorneys or employees, for services rendered in connection with the management of the Leased Property;

(ii) Payment of all impositions and other charges or expenses agreed to be paid by Redeveloper with respect to the Leased Property under the terms of this Agreement and of the applicable Lease;

(iii) If, at the time of re-entry by the Town, the Redeveloper was then in default with respect to the payment of rent, then, until the amount of such defaulted rent is repaid in full, together with interest thereon at the rata of six (6%) per cent per annum, computed from the time it became due, payment thereof shall be made from this source.

(C) Notwithstanding anything to the contrary in the foregoing subparagraphs of this Paragraph 14c(8):

(i) the remedies provided by this Paragraph 14c(3) are not exclusive, and the Town may, at its option, pursue the remedy of sale provided by Paragraph 14a, to the extent appropriate, and, in that event, the proceeds of such sale shall be applied as set forth in Paragraph 14b.(2); and

(ii) The Town shall not be under any obligation to repossess the Leased Property or any part thereof or to remove the Redeveloper therefrom or to terminate either the Redeveloper's right to possession thereof or the term of the applicable Lease, during any period in which the Redeveloper is in default under this Agreement or under the applicable Lease, and the foregoing provisions regarding the re-entry and repossession of the Leased Property, or any part thereof, by the Town, the management of the Leased Property so repossessed by the Town, and the disposition of the rents received by the Town, are intended to operate only if the Town shall elect to repossess the Leased Property, or such part thereof, in accordance with the terms of this Agreement.

15. Enforced Delay in Performance for Causes Beyond Control of Party.

For the purpose of any provision of this Agreement, neither the Town nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, any of its obligations with respect to the preparation of any Redevelopment Parcel for redevelopment, or the beginning or completion of any Improvement (or Land Improvement) referable thereto, or progress with respect thereto, in the event of enforced delay in the performance of such obligation due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy, acts or omissions (including unreasonable delay in acting with respect to any application for approval of any aspect of the construction or completion of any Unit) of the

Federal Government or of the HMDC or of any other governmental body or agency having jurisdiction with respect to any aspect thereof, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight delays, severe energy shortages, embargoes, and unusually severe weather, or delays of subcontractors due to any such cause, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Town with respect to the preparation of any Redevelopment Parcel for redevelopment or of the Redeveloper or Mimi with respect to construction of the Improvements (or Land Improvements) related thereto, as the case may be, shall be extended for the period of the enforced delay as determined by the Town; provided, that the party seeking the benefit of the provisions of this Paragraph 15 shall, within sixty (60) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or the causes thereof, and have requested an extension for the period of the enforced delay.

16. Rights and Remedies Cumulative; No Waiver.

The rights and remedies of the parties to this Agreement, or to any Lease executed pursuant to this Agreement, whether provided by law or by such Lease or by this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance, or manner or time thereof, of any obligation of any other party or of any condition to its own obligation under this Agreement or under the Applicable Lease, or both, as the case may be, shall be considered a waiver of any right of the party making the waiver with respect to the particular obligation of any other party, or of any condition to its own obligation, beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other right of the party

making the waiver or any other obligation of any other party.

17. Provisions Not Merged with Lease.

No provision of this Agreement is intended to or shall be merged by reason of any Lease transferring possession of any Redevelopment Parcel of part thereof from the Town to the Redeveloper or any successor in interest, and no such Lease shall be deemed to affect or impair any provision or covenant of this Agreement.

18. Option to Lease Additional Redevelopment Parcels.

a. The Town hereby gives Mimi (or a Permitted Assignee described in Paragraph 11) the exclusive option to rent from the Town additional portions of the Redevelopment Area, as separately designated Redevelopment Parcels, from time to time during the term of this Agreement, on the following terms and conditions:

(1) The Redevelopment Parcel which is the Leased Property subject to such Lease shall be specifically described in such Lease and shall consist of at least two (2) acres of the Redevelopment Area; and

(2) The Improvements proposed to be constructed on such Redevelopment Parcel shall be specifically described in such Lease; and

(3) No such Lease shall carry this option with it, since it is the intent of the Town and of Mimi that this option shall be exercisable only by Mimi, as herein provided, except to the extent that Mimi specifically assigns to a Permitted Assignee the right to exercise this option; and

(4) As more specifically provided elsewhere in this Agreement (including, without limitation, in Paragraphs 3, 4, 5, and 6, hereof, and the prior subparagraphs of this Paragraph 18a), all terms and conditions of each such Lease (including the provisions relating to amount and payment of rent and the availability of the benefits of the Fox-Lance Act) shall be substantially the same as those of the First Lease; and

(5) If and to the extent that any governmental agency requiring that a portion of the Redevelopment Area be designated as and maintained as "open space" or "green acres" or the like, Mimi will, at Mimi's option, either include a pro rata portion of such "open space" as part of the Leased Property under each Lease, or will increase the rent payable under each Lease, pro rata, in an amount sufficient to produce the same result, it being the intent of the parties that the Town shall receive rent as if each acre in the Redevelopment Area were ultimately leased to Redeveloper pursuant to a Lease, under which rent was paid at the rate described in Paragraph 5 hereof with respect to each such acre.

b. This option shall remain in effect unless:

(1) for any reason not constituting valid grounds therefor under this Agreement or under the applicable Lease, Mimi has not, no later than ninety (90) days after issuance of a Certificate of Completion, in accordance with the provisions of Paragraph 9, with respect to the final Unit of the most recently undertaken previous Project, entered into one or more new Leases (including, for this purpose, new Leases entered into by one or more Permitted Assignees) which, in the aggregate, obligate the Redeveloper thereunder to complete or cause to be completed at least thirty thousand (30,000) square feet of new leasable buildings on at least two (2) acres of new Redevelopment Parcel(s) leased pursuant to this option within the time limits established by this Agreement, as the same are more particularly set forth in the applicable Lease(s); it is understood and agreed that, where the square footage of such subsequent Improvements exceeds the amount of square footage of the First Improvements, the duration of the construction period will be appropriately increased (for example, if the Second Redevelopment Parcel were twenty-four (24) acres, then the Redeveloper would have to construct at least one hundred thousand (100,000) square feet of new Improvements on the Redevelopment

Parcel, no later than seventy-two (72) months after the Commencement Date of the applicable Lease, subject to the provisions of Paragraphs 6 and 15 hereof, as applicable thereto).

(2) Redeveloper is in default under the terms of any prior Lease entered into pursuant to this Agreement, and is not diligently proceeding to cure the same.

c. This option shall be exercisable by Mimi, and the parties shall enter into an appropriate Lease within thirty (30) days after Mimi has given the Town written notice of such exercise:

(1) at Mimi's sole discretion, at any time after Mimi has commenced or caused to be commenced construction of the first Unit of the Improvements of the most recently undertaken Project; or

(2) with the consent of the Town, at any time during the term of this Agreement.

d. The Town hereby agrees that Mimi's rights under this Paragraph 18 are assignable by Mimi to any otherwise qualified entity (including but not limited to an otherwise qualified redevelopment corporation or association) designated by Mimi, with which Mimi has a "substantial identity of interest" (as defined in Paragraph 11); any other attempted assignment by Mimi of its rights hereunder shall be a nullity, unless the Town shall consent thereto, and such consent shall not be unreasonably withheld.

e. As partial consideration for this option, Mimi agrees to pay to the Town, as long as any Project is being constructed pursuant to this Agreement, service costs at the rate of Thirty-five Hundred ($ 3,500.00) Dollars per calendar year, apportioned pro rata for any partial year, and payable in quarterly installments in advance, in the same manner as rent is paid under Paragraphs 5(a)(1) and (3), without further notice or demand, and without deduction, abatement or set-off for any reason whatsoever.

19. Compliance with Applicable Law.

a. Mimi shall, at its expense, promptly comply or cause compliance with all laws, ordinances and regulations of governmental units whether or not same shall presently be within the contemplation of the parties hereto.

b. Mimi reserves the right to contest any such laws, ordinances, orders, rules, regulations or requirements by appropriate legal proceedings and the Town agrees to support any such application or appeal provided same is consistent with the Redevelopment Plan which is the subject of this Agreement; provided, however, that the provisions of this Paragraph 19 shall not be deemed to compel the Town to join in or to initiate any such legal proceedings.

20. Indemnity.

a. Mimi covenants and agrees, at its sole cost and expense, to indemnify and save harmeless the Town against and from any and all loss, cost, expense or liability from claims by third parties, including, without being limited thereto, reasonable attorneys' fees and court costs, arising from or in connection with:

(1) the conduct or management of, or from, any work or thing whatsoever done by or on behalf of Mimi in or on the Redevelopment Area during the term of this Agreement, other than any work or thing done by or at the instance of the Town or any of its servants or employees;

(2) any breach or default on the part of Mimi in the performance of any covenant or agreement on the part of Mimi to be performed pursuant to the terms of this Agreement or any applicable Lease:

(3) any act of gross negligence of Mimi, or any of its agents, contractors, servants, employees, or licensees, with respect to any Redevelopment Parcel then leased to Mimi;

(4) any accident, injury or damage whatsoever

caused by Mimi to any person, firm or corporation occurring during the term of the applicable Lease, in or on the subject Redevelopment Parcel, other than those caused by the Town's negligence.

b. If any action or proceeding is brought against the Town by reason of any claim covered by the foregoing indemnity, Mimi, upon notice from the Town, agrees to resist or defend such action or proceeding by counsel reasonably satisfactory to the Town; for this purpose, counsel for Mimi's insurance carrier shall be deemed satisfactory.

c. Mimi agrees to pay, and to indemnify the Town against all legal costs and charges, including counsel fees, lawfully and reasonably incurred in obtaining possession of any Redevelopment Parcel then leased to Mimi, after default of Mimi, or upon expiration or earlier termination of the Term of the applicable Lease, or in enforcing any covenant or agreement of Mimi herein or therein contained.

21. Insurance.

a. During the term of each Lease hereunder Mimi shall, at its own cost and expense, as long as Mimi is the Lessee thereunder, provide and keep in force the following insurance:

(1) Comprehensive public liability insurance for the mutual benefit of the Town and Mimi, against claims for bodily injury, death or property damage occurring in or about the subject Redevelopment Parcel and the related Improvements (including, without limitation, bodily injury, death or property damage resulting directly or indirectly from or in connection with any change, alteration, improvement, or repair thereof), with limits of not less than $3,000,000 for bodily injury or death to any one person and $5,000,000 for bodily injury or death to any number of persons, and property damage with limits of not less than $250,000. Such insurance may be carried under a so-called "blanket policy" covering all Redevelopment Parcels, and each Redevelopment Parcel shall be added to the premises covered by such insurance, as soon as the Lease thereof is entered into.

(2) Insurance covering the subject Redevelopment Parcel against loss or damage by fire and lightning and such risks as are customarily included in extended coverage endorsements attached to fire insurance policies covering property similar to such premises (including windstorm, hail, explosion, riot, riot attending a strike and civil commotion, damage from aircraft and vehicle, vandalism and malicious mischief, sprinkler leakage, sonic boom and smoke damage) in an amount equal to 90% of the full replacement value thereof (excluding foundations and excavation costs) or such higher amount as either may be required by the holder of any fee mortgage covering the premises or is necessary to prevent the Town and/or Mimi from becoming a co-insurer.

b. All insurance to be provided and kept in force by Mimi under the provisions hereof shall name as the insured the Town and Mimi, as their respective interests may appear, except the insurance carried pursuant to Paragraph 21(a)(2) shall be carried in favor of the Town and the holder of any fee mortgage on the subject Redevelopment Parcel, and the standard mortgagee clause shall be attached to the appropriate policies. Insurance carried pursuant to Paragraph 21(a)(2)shall provide that the loss, if any, shall be adjusted with and payable to the party who will perform the work of restoration and such mortgagee, as their interests may appear.

c. All policies shall be obtained by Mimi and certificates thereof shall be delivered to the Town at or before the Commencement Date of the term of the Lease of the Redevelopment Parcel to which they refer and shall be taken in responsible companies; where appropriate, certificates of inclusion in a "blanket" policy shall suffice. All policies shall be for periods of not less than one year and shall contain a provision whereby the same cannot be cancelled unless the Town is given at least 10 days' written notice of such cancellation. Mimi shall

procure and pay for renewals of such insurance from time to time and Mimi shall promptly deliver to the Town certificates thereof at least 30 days before the expiration thereof.

d. If Mimi is not the Lessee under a particular Lease, these obligations shall be imposed on such Lessee, in the same manner as is done in Paragraph 21 of the First Lease.

22. Surrender of Leased Premises.

a. Redeveloper shall and will, on the last day of the term of the Lease of any Redevelopment Parcel, or upon any earlier termination of the Lease of any Redevelopment Parcel, pursuant to the provisions of that Lease, well and truly surrender and deliver up the subject Redevelopment Parcel into the possession and use of the Town without fraud or delay and in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings and occupancies other than subleases then terminable at the option of the Landlord thereof upon notice of no more than one (1) year or subleases executed during the term of such Lease to which the Town shall have specifically consented, and free and clear of all liens, mortgages and encumbrances, other than those, if any, existing on the date hereof or created by the Town or subsequent owners of the subject Redevelopment Parcel or created any Redeveloper in the course of redevelopment of the subject Redevelopment Parcel and in accordance with the terms of the applicable Lease or this Agreement, without any payment or allowance whatsoever by the Town on account of or for any buildings or Improvements erected or maintained on the subject Redevelopment Parcel at the time of thsi surrender or for the contents thereof or appurtenances thereto, whether or not the same or any part thereof, or any additions, improvements, alterations, restorations, repairs or replacements of the same or any part thereof shall have been paid for or purchased by Redeveloper and all such buildings, improvements, additions, alterations, restorations, repairs and replacements shall become the sole and absolute property of the Town without any obligation by the Town to pay any compensation

therefor, or by Redeveloper to remove the same, except that in the event of sooner termination and if at that time the holder of any leasehold mortgage shall exercise any of its options herein to obtain a new lease for the remainder of the term of such Lease, then title thereto shall automatically pass to, vest in and belong to the lessee under the new lease until the expiration or sooner termination of such new lease. The foregoing shall apply to any holder of a leasehold mortgage on any Redevelopment Parcel.

b. On the last day of the term of any Lease of any Redevelopment Parcel, or upon any earlier termination of any such Lease, subject to the right of any leasehold mortgagee to acquire title to any building or improvement as provided in Paragraph 22a, Redeveloper will, at the Town's request, and without charge, execute, acknowledge and deliver, and/or cause to be executed, acknowledged and delivered, to the Town, or the Town's designee, in proper form for recording, a good and sufficient deed and/or conveyance and/or bill of sale or such other instrument as may be necessary, sufficient or adequate, to transfer and convey to the Town, or such designee all the right, title and interest of Redeveloper, and, if Redeveloper is a Trustee, of any beneficial owner of Redeveloper's interest, in and to any buildings or Improvements, subject only to existing liens, mortgages or encumbrances as aforesaid. If Redeveloper shall fail to comply with the foregoing provisions, the Town, in addition to any other remedies available to it, in consequence thereof, may execute, acknowledge and deliver the same as the attorney-in-fact of Redeveloper and such beneficial owners, if any, and in its and their name, place and stead, and Redeveloper hereby irrevocably makes, constitutes and appoints the Town; or such designee, as then appropriate, or such person's successors and assigns, Redeveloper's such attorney-in-fact for that purpose. The said Deed and/or conveyance and/or Bill of Sale or such other instrument as referred to hereinabove shall be prepared and recorded at the expense of Redeveloper, and any sales, transfer,

stamp or similar tax in connection therewith shall be borne equally by Redeveloper and the Town.

c. Except for loss or damage occasioned by the acts or negligence of the Town, or any of such entity's contractors, agents, servants or employees, the Town shall not be responsible to Redeveloper for any loss or damage occurring to any property owned by Redeveloper for any loss or damage occurring to any property owned by Redeveloper or any subtenant or invitee or licensee.

d. The provisions of this Paragraph 22, shall survive the termination of the applicable Lease.

23. Condemnation.

a. If at any time during the term of this Agreement and the applicable Lease, any Leased Property (including any Improvement thereon) shall be taken for any public or quasi-public purpose by any competent power or authority by the exercise of any right of eminent domain or in condemantion proceedings, or by agreement between the Town, the Redeveloper, and those authorized to exercise such right:

(1) The Lease thereof and the Term thereof shall automatically cease and terminate, if all or materially all thereof was so taken, as of the date upon which title shall vest in such authority, and the rent therefor shall be apportioned and paid up to said date (for purposes hereof, the term "materially all" shall mean a taking of so much of such Leased Property (or Imrovement, as the case may be) that what remains thereof is not reasonably usable for the purposes for which it was used immediately prior to such taking); and

(2) if less than all or materially all of the Leased Property subject to such Lease is so taken, then any Lot or Lots, title to which shall have vested in such authority, shall be deemed automatically eliminated from the status of Leased Property under such Lease, as of the date upon which title thereto shall best in such authority, and the rent payable under such Lease shall be adjusted pro rata for the remainder of its Term, and the Town shall,

if requested by Redeveloper, execute and deliver an appropriate modification of the Lease confirming the elimination of such item or items from the status of Leased Property covered by the Lease, and confirming the pro rata adjustment of the rent thereunder.

b. If any such taking occurs, the Town and Redeveloper agree to cooperate in applying for and in prosecuting any claim for such taking, and agree that the aggregate net award, after deducting all expenses and costs, including attorneys' fees, incurred in connection therewith shall be paid jointly to Redeveloper and the Town (or, if required, to the holder of any Mortgage Loan placed on all or part of the Leased Property affected by such taking) and shall be distributed as follows:

(1) If such taking affects only a portion of an Improvement or the Lot on which it is located and such Lot is not eliminated from the Lease, then the Town shall receive and keep an amount equal to the then fair market value of the Town's reversionary interest in the affected property, and Redeveloper shall receive and keep the balance of the entire net award paid. In such event, Redeveloper at its own cost and expense (whether or not the net award shall be sufficient or any Mortgage Loan placed on such Lot shall permit the net award to be used for repair and restoration) shall diligently repair and restore any remaining portion of such Improvement to a complete architectural unit.

(2) If such taking affects all or materially all of (A) the Leased Property, as provided in Paragarph 24a.(1), or (B) an Improvement or the Lot on which it is constructed, as provided in Paragraph 23a.(2), then the Town shall promptly refund to Redeveloper (or Mimi, as the case may be) any prepaid rent attributable to such Leased Property which was paid by such party, and the net award shall be paid as follows:

(i) First there shall be paid, out of the net award, to the holder of any Mortgage Loan then a lien against the Leased Property, or the Improvement, or the Lot (as the case may be) so affected by such taking, the unpaid principal balance of such Mortgage Loan.

(ii) The balance of the net award (hereinafter called the "Fund") remaining after such payment to the holder of such Mortgage Loan shall be divided between the Town and Mimi as follows:

(A) Mimi (and/or Redeveloper, as their interests shall appear) shall be paid (in the aggregate) an amount out of the Fund equal to "Lessee's Share" as defined in Paragraph 23(b) (2) (ii) (C), and the Town shall be paid an amount out of the Fund equal to "Lessor's Share" as defined in Paragraph 23(b) (2) (ii) (D); provided,however, that if the balance of the Fund, after distribution to Lessee of Lessee's Share, would be less than Lessor's Share, then Lessor shall be paid, and shall be entitled to receive, only an amount equal to the balance of the Fund remaining after such payment to Lessee. If Lessor fails to promptly refund to Lessee any prepaid rent as provided above, then, in addition to all other remedies available to Lessee, the amount of such prepaid rent not so refunded shall be paid to Lessee out of Lessor's Share.

(B) Any balance of the Fund, after payment to Lessee of Lessee's Share and to Lessor of Lessor's Share, shall be divided between Lessor and Lessee as follows: 75% thereof to Lessee and 25% thereof to Lessor.

(C) The term "Lessee's Share" as used above shall mean an amount equal to the sum of: (1) the greater of (A) the then fair market value of all buildings and other Improvements on or referable to the land taken (including Land Improvements) or (B) the Redeveloper's and Mimi's combined total cost and expense of every kind and nature incurred and paid in connection with and for the construction, repair and replacement, if any, of all buildings and other improvements (including Land Improvements) on or referable to the land taken, less the amount of the net award paid to the holder of any Mortgage Loan pursuant to paragraph 23(b) (2) (i), and, for this purpose, the certification by Lessee's independent certified public accountant of said total costs and expenses shall be conclusive between the parties for purposes of this Paragraph (provided, however, that, if Lessee shall at the time of such taking be unable to certify and establish such total costs and expenses shall be deemed to be an amount equal to the original cost basis of such buildings and improvements used by Lessee for income tax depreciation purposes, increased by the increase, if any, in such cost basis from time to time resulting from repairs and replacements to such buildings and improvements); and (2) the then fair market value of Lessee's interest under the Lease of the Leased Property taken.

(D) The term "Lessor's Share" as used above shall mean an amount determined by multiplying (1) the then fair market value of the Lessor's reversionary interest in the land taken per acre, by (2) the number of acres so taken.

c. If any governmental action does not result in the taking or condemnation of any portion of the Leased Property but creates a right of compensation therefor, such as, without limitation (except as provided in Paragraph 23d), the changing of the

grade of any street on the Leased Property or upon which the Leased Property abuts, the applicable Lease shall continue in full force and effect,without reduction or abatement of rent, and the rights of Lessor and Lessee sahll be unaffected by the other provisions of this Paragraph, as contained in the Lease, and shall be governed by applicable law. The holder of any Mortgage Loan shall be entitled to any award paid therefor, and, if there be no such Mortgage Loan, the same shall be paid to Lessee.

d. If the temporary use of the whole or any part of the Leased Property shall be taken at any time during the term of the applicable Lease or of any renewal hereof for any public or quasi-public purpose of any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement between Lessee and those authorized to exercise such right, Lessee shall give prompt notice thereof to Lessor and the term of the applicable Lease and of any renewal thereof shall not be reduced or affected in any way and Lessee shall continue to pay in full the net rent and other sum or sums of money and charges reserved and provided to be paid by Lessee, but Lessee shall be entitled to, and shall receive the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the sovereign shall extend beyond the termination of the applicable Lease, and of any renewals hereof, in which case the award made for such taking shall be apportioned between Lessor and Lessee as of the date of such termination. In any proceeding for any such taking or condemnation, Lessor shall have the right to intervene and to participate in such proceedings; provided, however, that if such intervention shall not be permissible or permitted by the court, Lessee shall, at Lessee's expense, consult with Lessor, its attorneys and experts, and make all reasonable efforts to cooperate with Lessor in the prosecution or defense of such proceedings. At the termination of any such use or occupation of the Leased Property by the sovereign, Lessee will, at its sole cost and expense, repair and restore the buildings and Improvements then upon the Leased Property to the

condition, as nearly as may reasonably be possible, in which the same were at the time of such taking, but Lessee shall not be required to make such repairs and restoration if the term of the applicable Lease shall expire prior to, or within one year after, the date of termination of the temporary use so taken, and in such event Lessor shall be entitled to claim, sue for and recover from the sovereign all damages and awards therefor arising out of the failure of the sovereign so to repair and restore the building at the expiration of such temporary taking. Any recovery or sum received by Lessee as an award or compensation for physical damage to the premises caused by and during the temporary taking shall be deemed a trust fund to be used first for the purpose of repairing or restoring such damage.

e. If any taking described in this Paragraph 23 affects a portion of the Redevelopment Area which is then subject to the option described in Paragraph 18, with the result that such land is deprived of that status and Mimi's option with respect to it is cancelled, the, provided that Mimi or its Permitted Assignee shall have completed or caused to be completed the construction of the Improvements on the First Redevelopment Parcel, as described in Paragraph 6c, Mimi shall be entitled to receive one-third (1/3) of the amount, if any, by which the amount awarded in the condemnation proceedings with respect to such optioned land exceeds the "reuse value" of such land as of the date of execution of this Agreement.

24. Maintenance and Repair; Damage or Destruction of Improvements.

a. In full discharge of Redeveloper's duty to maintain and repair the Leased Property (and related Improvement) under this Agreement and the applicable Lease, Redeveloper shall, as landlord, enter into one or more lease agreements with tenants which will impose on the Redeveloper's tenant the duty to maintain the property subject to such lease agreement, by including therein a provision substantially the same as that annexed to this Agreement as Exhibit 5, which is incorporated herein by this reference.

b. Similarly, in full discharge of Redeveloper's duty under this Agreement or the applicable Lease to restore any destroyed property, Redeveloper shall, as landlord, impose on each of its tenants the duty to restore destroyed property by including in each lease agreement entered into by Redeveloper, as landlord, a provision substantially the same as that annexed hereto as Exhibit 6, which is incorporated herein by this reference. Notwithstanding anything to the contrary in the foregoing: (i) Redeveloper shall be required to restore the destroyed Leased Property only if Redeveloper's tenant elects to continue its lease thereof; and (ii) if such property is leased to a series of tenants, Redeveloper shall be obligated to restore such property only if tenants constituting the lessees under leases yielding sixty-six and two-thirds (66-2/3%) per cent of the gross rentals derived from such destroyed property elect not to terminate their leases as the result of such destruction.

25. Effect of Bankruptcy, etc., of Redeveloper.

Redeveloper agrees that, if any proceedings under the Bankruptcy Act or any amendment thereto shall be commenced by or against it, and, if against Redeveloper, such proceedings or the confirmation of a composition, arrangement, or plan of reorganization, or if Redeveloper is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which Redeveloper is a party, with authority to take possession or control of the demised premises or the business conducted thereon by Redeveloper, and such receiver is not discharged within a period of sixty (60) days after his appointment, any such event or any involuntary assignment shall be deemed to constitute a breach of this Agreement and of the applicable Lease, by Redeveloper and shall, at the election of Town, but not otherwise, and without notice or entry or other action of Town, terminate this Agreement, and the applicable Lease, and also all rights of Redeveloper hereunder and thereunder, and also rights of any and all persons

claiming under Redeveloper.

26. Notices and Demands.

Any notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested, or delivered personally and: in the case of Mimi, addressed to its Chief Executive Officer, Dolores Turco, with a copy to its Corporate Counsel, David A. Biederman, each of the foregoing having an address for this purpose of 590 Belleville Turnpike, Kearny, New Jersey 07032; in the case of the Town, addressed to the Mayor of Kearny, with a copy to the Town Attorney, each of the foregoing having an address for this purpose at the Town Hall, Kearny, New Jersey 07032; or to any such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the others provided in this Paragraph.

27. Captions.

Any caption of any portion of this Agreement is inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

28. Short Form Lease.

The parties to any Lease will at any time at the request of either one, execute duplicate originals of an instrument in recordable form which will constitute a short form of a lease, setting forth a description of the demised premises subject to such Lease, the term of that Lease and any other portions thereof (except the rent provisions) that either party may request, or as the applicable recording law may require.

29. Reasonable Consent.

If the consent or approval of either party hereto is required, or if any act, thing or performance is to be to the satisfaction of either party, pursuant to any provision of this

Agreement, such consent or approval shall not be unreasonably withheld or delayed and such satisfaction shall be deemed to be the reasonable satisfaction of the party to be satisfied. In the event of failure to respond to any request for consent or approval for a period of twenty (20) business days after receipt of such request is made in accordance with the provisions of this Agreement, such failure shall conslusively constitute the granting of such consent or approval.

30. References.

All references made and pronouns used herein shall be construed in the singular and plural, and in such gender as the sense and circumstances require.

31. Severability. If any provision of this Agreement shall be declared invalid or illegal for any reason whatsoever, remaining terms and provisions of the within Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

32. Interpretation Under Laws of the State of New Jersey.

a. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey.

b. The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of the Town and Mimi, and their respective heirs, personal representatives, successors and assigns.

33. Arbitration.

a. Notwithstanding anything to the contrary herein, this Agreement shall be subject to arbitration only insofar as is expressly stated in Paragraphs 6f and 9b hereof, and no arbitrator shall have the power or authority to amend, alter, or modify, any part of this Agreement, in any way, nor shall any other provision of this Agreement be subject to arbitration, to any extent.

b. Either party may at any time bring an action in the Superior Court of the State of New Jersey for the construction or enforcement of any provision of this Agreement.

34. Entire Agreement.

This Agreement constitutes the entire agreement between the parties with regard to the transactions contemplated hereby and cannot be changed or terminated orally, but only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

35. Counterparts.

This Agreement is executed in counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Town of Kearny, New Jersey has caused this Agreement to be duly executed on behalf of the Town by the Mayor, and its seal to be hereunto duly affixed and attested by the Town Clerk of the Town of Kearny, New Jersey, and Mimi Development Corp., has caused this Agreement to be duly executed by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

ATTEST:

By: _____
David C. Rowlands, Mayor

_____
James Cantlon, Town Clerk

MIMI DEVELOPMENT CORP.

ATTEST:

By: _____
Dolores Turco, President

_____
Mimi Turco, Secretary

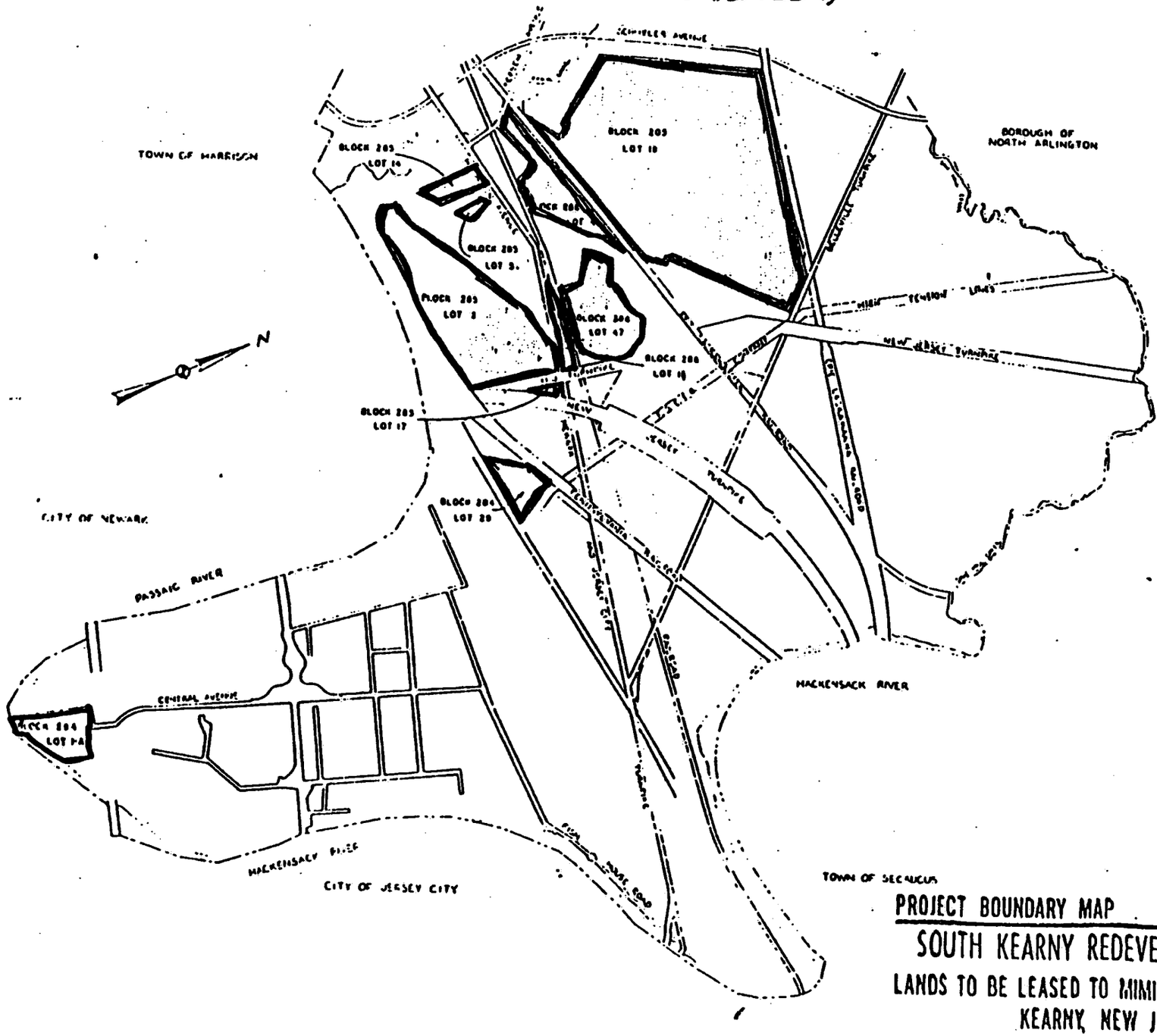
STATE OF NEW JERSEY)
)SS:
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this 7th day of August, 1979, before me, the subscriber, an Attorney at Law of New Jersey, personally appeared JAMES CANTLON, who being by me duly sworn, did depose and make proof to my satisfaction that he is the Town Clerk of the Town of Kearny; that he well knows the corporate seal of said Town of Kearny, the Town named in the foregoing Instrument; that the seal thereto affixed is the proper corporate seal of said Town of Kearny; that the same was so affixed thereto and the said Instrument signed and delivered by DAVID C. ROWLANDS, who was, at the date and execution thereof, the Mayor of the Town of Kearny, in the presence of said deponent, as the voluntary act and deed of said Town; and that the deponent thereupon signed the same as subscribing witness.

Sworn to and Subscribed
before me this 7th day
of August, 1979.

David C. Rowlands

SCHEDULE A



PROJECT BOUNDARY MAP 1

SOUTH KEARNY REDEVELOPMENT AREA

LANDS TO BE LEASED TO MINI DEVELOPMENT CORP.

KEARNY, NEW JERSEY

PLANNING CONSULTANT: PLANNING DIVISION

STATE OF NEW JERSEY)
)SS:
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this 8th day of August, 1979, before me, the subscriber, an Attorney at Law of New Jersey, personally appeared MIMI TURCO, who, being by me duly sworn on her oath, doth depose and make proof to my satisfaction, that she is the Secretary of MIMI DEVELOPMENT CORP., the corporation named in the within Instrument; that DOLORES TURCO is the President of said corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the board of directors of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed and said Instrument signed and delivered by said President, as and for her voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

Mimi Turco

Sworn to and subscribed
before me this 8th day
of August, 1979.

David S. Brodsky

EXHIBIT 2

FINANCIAL AGREEMENT

THIS AGREEMENT (the "Financial Agreement") entered into as of the day of , 1979, by and between the TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the"Town") and MIMI REDEVELOPMENT ASSOCIATES I, a partnership having its principal office at 590 Belleville Turnpike, Kearny, New Jersey 07032 (the "Redeveloper"), which is qualified to do business under the provisions of the Urban Renewal Corporation and Associations Law of 1961 (N.J.S.A. 40:55C-20, et seq.), as amended and supplemented (the "Act"):

W I T N E S S E T H

WHEREAS, the Town has undertaken an urban renewal or redevelopment project within the Town of Kearny in furtherance of the objectives of Chapter 187 of the Public Laws of 1949 of the State of New Jersey, as amended and supplemented, in accordance with a redevelopment plan for the area of approximately 684.84 more or less acres lying within the municipal boundaries of the Town, which is more particularly described on the survey annexed hereto as Schedule A and incorporated herein by this reference (the "Redevelopment Area"), as shown on a plan designated "Kearny Meadowlands Redevelopment Area, Redevelopment Plan", a copy of which is annexed hereto as Exhibit 1 and is incorporated by this reference (the "Redevelopment Plan"); and

WHEREAS, the Plan contemplates, inter alia, the redevelopment by the Town of portions of the Redevelopment Area with buildings and improvements for industrial, commercial and business use and related offstreet parking; and

WHEREAS, the Town has entered into a Master Leasing and Option Agreement with MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi") dated

for the purpose of providing for the redevelopment of the Redevelopment Area (the "Master Agreement"); and

WHEREAS, under the Redevelopment Plan, an area within the Redevelopment Area, outlined in red on Schedule A hereto and bounded as described on Schedule B annexed hereto and incorporated herein by this reference (the "First Redevelopment Parcel") is designated for use as a major distribution center; and

WHEREAS, pursuant to the terms of the Master Agreement, Mimi has designated Redeveloper as its Permitted Assignee, as described therein, with respect to the redevelopment of the First Redevelopment Parcel; and

WHEREAS, pursuant to the Master Agreement, the Redeveloper entered into a lease with the Town (the "Lease") pursuant to which the Redeveloper has leased the First Redevelopment Parcel from the Town and has agreed to construct thereon Improvements consisting of a building complex containing at least 50,000 square feet, said Improvements together with said Redevelopment Parcel being referred to as the "First Project", and each such Improvement together with its Lot being referred to herein as a "Unit"; and

WHEREAS, in accordance with the Lease and in accordance with the Act, the Redeveloper has heretofore made written application to the Town for approval of the First Project; and

WHEREAS, the Town Council has heretofore by resolution adopted and approved the application, a copy of such application and a certified copy of such resolution of approval being attached hereto as Schedules "C" and "D" respectively; and

WHEREAS, the Town believes that the in lieu tax consideration to be given to each of the Improvements comprising part of the First Project pursuant to this Financial Agreement affords maximum redevelopment of the First Redevelopment Parcel and is, therefore, in the best interests of the Town and the health, safety, morals and welfare of its residents and is in accordance with the provisions of the Act and the public purposes pursuant to which the redevelopment of the Kearny Meadowlands Redevelopment Area has been undertaken and is being assisted in accordance with the applicable provisions of State law;

NOW, THEREFORE, it is mutually agreed as follows:

1. The Redeveloper represents that the application attached to this Financial Agreement as "Schedule C" and incorporated herein by this reference sets forth the manner in which the Redeveloper proposes to develop, manage and operate the First Project and each of the Units therein, the plans for financing the First Project, including, but not limited to, the estimated total First Project Cost, the interest and amortization rates on the total First Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amounts of projected permanent mortgage financing, and the proposed First Project rental schedules and lease terms as well as the projected "Annual Gross Revenue" (hereinafter defined) and net profit for the First Project. Redeveloper covenants and agrees to use its best efforts to conform in the development, construction and operation of the First Project to the matters and things set forth in said application, that is, the manner in which Redeveloper proposes to develop, manage and operate the First Project, and the plans for financing the First Project, it being understood, however, with particular respect to the First Project Cost (and the cost of each Unit thereof), interest rate, financing terms

and mortgage amortization, rental schedules and lease terms, that the same are projected and estimated and may be modified as particular circumstances may require, but that in all material respects it is the intent and agreement of the Redeveloper to comply as closely as shall be practicable with the information and representations set forth in said application.

2. Subject to the provisions of Paragraph 16, the Town hereby grants to the Redeveloper, but only to the extent hereinafter expressly set forth in Paragraph 3(a) hereof, exemption from real property taxation on the Improvements to be constructed on the First Redevelopment Parcel for a period of not more than twenty (20) years from the date of the execution of this Financial Agreement or for a period of not less than fifteen (15) years from the "date of first operation of the Unit" of the First Project (as hereinafter defined), whichever period ends first.

3. (a) (1) (A) The Redeveloper shall pay for each year for which tax exemption is claimed and granted, as an annual service charge in lieu of real property taxes on the Improvements for each Unit required to be constructed by the Lease, beginning on the date of first operation of that Unit, an amount equal to fifteen (15%) percent of the Annual Gross Revenue received by the Redeveloper from all Improvements in that Unit.

(B) Since the date of first operation of a Unit may not be the start of a calendar year, and the in lieu payments are due on a calendar year basis, the aforesaid annual service charge shall be adjusted on a pro rata basis with respect to any year in which the period after the date of first operation of a Unit is less than a full calendar year.

(b) As used in this Financial Agreement, the term "Annual Gross Revenue" shall include total annual gross rentals and other income received by Redeveloper from the First Project, but shall not include payments for insurance, utilities, assessments or any maintenance expenses (including maintenance expenses of common areas), made directly to Redeveloper or by a tenant for the tenant's own account pursuant to any occupancy lease, it being the intent of this provision to recognize that Redeveloper's

leases with its tenants will likely by "net" leases and that under such leases these amounts are ordinarily paid by the tenant.

(c) As used in this Financial Agreement, the term "date of first operation of the Units" is defined as the date on which actual occupancy of a portion of the building or Improvement by a tenant of said Unit first occurs.

4. Against the annual services charge as provided herein, the Redeveloper shall be entitled to a credit for the amount, without interest, of the real estate taxes on the land comprising the First Redevelopment Parcel paid by it in the last four (4) preceding quarterly installments.

5. The Redeveloper further covenants and agrees as follows:

(a) To limit its profits and dividends payable in accordance with the provisions of the Act.

(b) To pay the annual service charge as provided for in Paragraph 3 hereof, annually, within thirty (30) days after the close of each calendar year. In the event that such payment is not made, the Town may proceed to enforce the collection thereof in the same manner and with the same rights as are applicable to delinquent real estate taxes or in any other manner authorized by the Act.

(c) To submit annually, within ninety (90) days after the close of each of its fiscal years, its auditor's reports of income from and expenses related to the First Project, to the Mayor and governing body of the Town, which reports shall remain confidential except as otherwise provided by law.

(d) Upon request of the Town, to permit inspection of the property, equipment, buildings and other facilities of the Redeveloper, and to permit examination and audit of any of its books, contracts, records, documents and papers relating to this Agreement or the First Project, by duly authorized representatives of the Town, provided same are at reasonable hours on reasonable

notice and in the presence of designated representatives of Redeveloper

(e) At all times prior to the expiration or other termination of this Financial Agreement, to remain bound by the provisions of the Act.

(f) Not to effect or execute any agreement, lease, conveyance, or other instrument, whereby the First Project, or any part thereof, is restricted upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease or occupancy thereof, nor to discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease, or rental, or in the use or occupancy, of the First Project or any Improvement erected or to be erected thereon, or any part thereof, and to comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, sex or marital status.

(g) During the period of tax exemption as provided herein, to be subject to limitation of profits payable by it pursuant to the provisions of N.J.S.A. 40:55C-66, and Redeveloper shall have the right to establish reserves against unpaid rentals, and reasonable contingencies, which shall include but shall not be limited to the cost of renovating portions of the Units from time to time for purposes of rerenting, and/or vacancies in an amount not exceeding ten (10%) per cent of the gross revenues of the Redeveloper from the First Project for the fiscal year preceding the date in which a determination is being made with respect to permitted "net profits" as provided in N.J.S.A. 40:55C-66. In computing "net profit" as provided in N.J.S.A. 40:55C-50, the Redeveloper shall deduct from gross revenues an annual amount sufficient to amortize the "total Project cost" and/or "total Unit cost", as defined in the Act, as the case may be, over the period of 25 years. For this purpose, in computing "total Project cost" or "total Unit cost", the rentals shall be capitalized at ten (10%) per cent.

(h) Within ninety (90) days after the end of its fiscal year, to pay to the Town any profits in excess of the profits permitted it under the provisions of the Act.

6. It is understood and agreed that, subject only to the provisions of Paragraphs 2 and 16, and in all other respects notwithstanding anything herein expressed or implied to the contrary, at the end of twenty (20) years from the date of the execution of this Financial Agreement, or at the end of fifteen (15) years from the date of first operation of a particular Unit of the First Project, as defined herein, whichever period ends first, the tax exemption upon that particular Unit of the First Project shall thereupon absolutely cease, and the Lot and Improvement comprising such Unit of the First Project shall thereupon be assessed and taxed according to general law as other property in the Town is assessed and taxed, and, at the date on which the tax exemption upon the entire First Project absolutely ceases, as described above, all restrictions and limitations herein contained as provided by law shall absolutely terminate and be at an end and the Redeveloper shall thereupon render its final account to the Town.

7. Before having received a Certificate of Completion in accordance with the terms and conditions of the Lease with the Town, the Redeveloper shall not voluntarily transfer the First Project, or any Unit thereof, to anyone other than a qualified urban renewal association or corporation, and any such transfer shall be subject to the condition that the transferee shall assume all of the Redeveloper's obligations under this Financial Agreement and to the further conditions that the transferee otherwise qualify under all other applicable requirements of law and that the Town specifically consent thereto. The Town hereby consents to Redeveloper's voluntary transfer of the First Project, or any Unit thereof, to another entity qualified under the Act owning no other Project at the time of transfer, as provided by N.J.S.A. 40:55C-60, at any time after Redeveloper has received a Certificate of Completion with respect to the First Project (or Unit, as the case may be) then being so transferred.

8. The Redeveloper may at any time after the expiration of one (1) year from the completion date of the entire First Project (which shall be the date of first operation of the last Unit) notify the Town that as of a certain date designated in said notice it relinquishes its tax exemption status. As of the date so set, the tax exemption, the service charges, the profit restrictions, and all other restrictions and limitations imposed by this Financial Agreement and by the Act shall terminate.

9. Upon any termination of such tax exemption, obligation and restrictions, whether by affirmative action of the Redeveloper as provided in Paragraph 8 above or by the provisions of the Act pursuant to this Financial Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Redeveloper, and within ninety (90) days after the date of such termination the Redeveloper shall pay to the Town a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40:55C-66, as well as the excess profit, if any, payable pursuant to N.J.S.A. 40:55C-66, and pursuant to Paragraph 5 of this Financial Agreement by reason of the treatment of such date as the end of the fiscal year.

10. Subject to the provisions of Paragraphs 11(c), 13b, and 13c, in the event of a default in or breach of this Financial Agreement by Redeveloper, if such default or breach is not cured within ninety (90) days after receipt by Redeveloper of written demand by the Town to do so, then the Town may terminate this Financial Agreement and such termination shall be deemed to be a termination of tax exemption as herein provided.

11. The Redeveloper shall give the Town written notice of any mortgage loan providing for the advancing of funds either for temporary or construction loans or for permanent financing in respect to the Land, Improvements, or both, for each Unit constituting the First Project ("mortgage Loan"), together with the name and address of the holder of such Mortgage Loan. Anything contained herein to the contrary notwithstanding, in order to meet the terms, conditions and provisions required to secure a Mortgage Loan to

finance the First Project or a Unit thereof, Redeveloper and the Town further agree, for the benefit and protection of the holder of a Mortgage Loan, provided the Redeveloper has given the Town notice of such Mortgage Loan, that:

(a) The Redeveloper will keep, observe and perform each and every provision of this agreement and so every other act and all things required by law to keep and continue this agreement in full force and effect for the full period provided for herein except as may otherwise be agreed to by the holder of the Mortgage Loan:

(b) The Town and the Redeveloper will make no agreement expressly, impliedly, or by conduct, serving to modify, alter, add to, terminate or delete, any provision of this Agreement and will exercise no option or right hereunder unless the Redeveloper has prior thereto obtained and furnished to the Town the written consent of the holder of the Mortgage Loan:

(c) If there is any default by the Redeveloper hereunder, and if such default has not been waived by the Town and has not been cured (or, if appropriate, the curing of such default has not commenced) by Redeveloper (or the Permitted Assignee involved in such default, as the case may be) after due notice thereof, within the period therefor stated in this Financial Agreement, the Town agrees that before taking any step which it may then be entitled to take, it will at that time first notify the holder of the Mortgage Loan thereof and then provide a reasonable opportunity to cure the same in light of the nature of the default and the available means to correct it, but in any event shall allow not less than thirty (30) days from the date of such notice to the Mortgagee of such default, and, if and to the extent that the Mortgagee cures any default, or causes the same to be cured, the Mortgagee shall be subrogated to the rights of the Town hereunder and under the applicable Lease, and shall have the right, but not the duty, to attorn to the position of the Redeveloper hereunder and under the applicable Lease, as more particularly set forth in the Master Agreement and in Paragraphs 13b and c hereof;

(d) All the terms and provisions of the Redevelopment Projects Mortgage Loan Act of 1967 (N.J.S.A. 55:17-1 to 55:17-11) shall be made a part of and included herein with like effect as though recited at length;

(e) No waiver, election, acquiescence, and estoppel or consent on the part of or against either party hereto shall affect or be binding upon the holder of the Mortgage Loan unless the Redeveloper has obtained and furnished to the Town the prior written consent of the holder of the Mortgage Loan; and

(f) Nothing in this agreement shall be construed in any way as to adversely affect the right of the Town to receive the contractual payments and other substantive rights to which it may be entitled under

this agreement, it being the primary intention hereof that all of the terms, conditions and provisions hereof shall be and remain in full force and effect for the benefit and protection of the holder of the Mortgage Loan, notwithstanding any default or breach by the Redeveloper, its successors or assigns, so long as the Town receives, whether from the Redeveloper or from its lawful transferee or the holder of the Mortgage Loan, its subsidiary, nominee or assignee, the performance to be provided to it.

12. Neither the Redeveloper nor any of its partners, limited or general, shall be personally liable for the payment of the Annual Service Charge nor for the payment of any tax or assessment which may be levied or assessed against any land or building now or hereafter constituting all or a portion of the First Project.

13. (a) Any Notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested, or delivered personally and: in the case of the Redeveloper, addressed to its General Partner, with a first copy to Mimi, addressed to its Chief Executive Officer, and with a second copy to Mimi's Corporate Counsel, each of the foregoing having an address for this purpose at 590 Belleville Turnpike, Kearny, New Jersey 07032; in the case of the Town, addressed to the Mayor of Kearny, New Jersey, with a copy to the Town Attorney, each of the foregoing having an address for this purpose at Town Hall, Kearny, New Jersey; or to any such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the others as provided in this Paragraph.

(b) Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Financial Agreement, the Town shall at the same time forward a copy of such notice or demand to each holder of any Mortgage Loan authorized by this Agreement at the last known address of such holder shown in the records of the Town; provided, however, that the forwarding to the Mortgagee of a copy of a notice or demand to the

Redeveloper, pursuant to this Paragraph 13b, shall not constitute the giving of the notice or demand required by Paragraph 11(c).

(c) (1) After any breach or default referred to in the foregoing paragraph 13b., each such holder shall (insofar as the rights of the Town are concerned) have the right, at its option, to cure or remedy such breach or default (to the extent that it relates to the part of the Redevelopment Area covered by its Mortgage Loan) and to add the cost thereof to its Mortgage Loan.

(2) Any such holder or any permitted transferee of any such holder who shall cure or remedy any breach or default which is referred to in the foregoing Paragraph 13b. shall be entitled to the benefits of the tax abatement previously granted to the Redeveloper prusuant to the Fox-Lance Act and this Financial Agreement, to the same extent that the Redeveloper would then have been if no default had occurred.

14. (a) In the event of any dispute between the parties concerning this Financial Agreement, the matters in controversy shall be resolved by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in the Superior Court of New Jersey. Costs for said arbitration shall be borne equally by the parties.

(b) Anything in the foregoing to the contrary notwithstanding: (1) any dispute between the parties hereto concerning any provision of this Financial Agreement shall be governed by the Laws of the State of New Jersey; and (2) no arbitrator shall have the power or authority to amend, alter, or modify any part of this Agreement, in any way.

15. If any clause, sentence, subdivision, paragraph, section or part of this Financial Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part hereof directly involved in the controversy in which said judgment shall have been rendered.

16. This Financial Agreement may be modified from time to time only by written agreement duly executed by the parties hereto, provided said modification is consistent with the Act; provided, however, that the parties hereto hereby agree that if the Act is amended during the period descirbed in Paragraph 2 or 6 hereof, with the result that the maximum period of tax exemption previously authorized by the Act is increased, then the period for which the exemption from real property taxation described in Paragraph 3 hereof is granted hereunder shall be automatically increased (but not by more than five (5) years), so that the total period of such exemption granted hereunder shall have such new maximum duration (but not more than twenty (20) years) and the relevant operative provisions of this Financial Agreement shall be deemed automatically amended, nunc pro tunc; provided, further, that if either party deems it appropriate or necessary, the parties hereto shall execute an appropriate amendment to this Financial Agreement, no later than sixty (60) days after the enactment of such amendment to the Act.

IN WITNESS WHEREOF, the Town has caused this Financial Agreement to be duly executed in its name and on its behalf by the Mayor, and the Redeveloper has cuased this Financial Agreement to be duly executed on its behalf by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

ATTEST:

By: _____
David C. Rowlands, Mayor

_____
Town Clerk

MIMI DEVELOPMENT ASSOCIATES I

ATTEST:

By: _____
Dolores Turco, President

_____
Mimi Turco, Secretary

EXHIBIT 3

CERTIFICATE OF COMPLETION

WHEREAS, the Town of Kearny, a municipal corporation of the State of New Jersey, has heretofore entered into a Lease of Land for Private Redevelopment dated

(the "Lease") with

(the "Redeveloper"); and

WHEREAS, pursuant to said Lease, dated

, and recorded

in the Hudson County Clerk's Office, in Book of Leases, page , the Town leased to the Redeveloper the property described in "Schedule A" annexed hereto and hereby made a part hereof; and

WHEREAS, the aforesaid Lease of Land for Private Redevelopment requires the Redeveloper to construct a building or buildings of not less than square feet (the "Improvement"); and

WHEREAS, the Town has reviewed the Redeveloper's plans and has inspected the Improvement as constructed by the Redeveloper on the property described in "Schedule A" and is satisfied that the aforesaid Improvement has been properly constructed and completed in accordance with the aforesaid Lease of Land for Private Redevelopment;

NOW, THEREFORE, the Town hereby certifies as follows:

1. Redeveloper has fully completed all of the construction of the Improvement on that portion of the property described in "Schedule A" which is described in "Schedule B",

annexed hereto and hereby made a part hereof, in accordance with the requirements, terms and conditions of the Lease of Land for Private Redevelopment, dated
and this Certificate shall constitute a conclusive and incontestible determination that all of the terms, covenants, agreements and conditions in respect of the construction of the said Improvement on said property, including the dates for commencement and completion of construction thereof, have been fully satisfied and terminated.

2. Redeveloper is entitled to exercise all rights of sale, lease, transfer or other disposition of the property as provided in the Lease of Land for Private Redevelopment dated and all restrictions and prohibitions against assignment and transfer contained in the aforesaid Lease (including, without limitation, those contained in Paragraph 11 thereof) which are conditioned upon the issuance of a Certificate of Completion by the Town, are hereby terminated.

IN WITNESS WHEREOF, the said Town of Kearny has caused this Certificate to be executed by its Mayor, and has caused the corporate seal of the Town of Kearny to be hereunto affixed, and these presents to be attested by the Clerk of the said Town of Kearny, this day of , 197 .

ATTEST:

THE TOWN OF KEARNY

By_____

_____, Town Clerk

, Mayor

STATE OF NEW JERSEY)
) ss:
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this day of , 197 , before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared , who, being by me duly sworn, did depose and make proof to my satisfaction that he is the Town Clerk of the Town of Kearny; that he well knows the corporate seal of said Town of Kearny, the Town named in the foregoing Certificate; that the seal thereto affixed is the proper corporate seal of said Town of Kearny; that the same was so affixed thereto and the said Certificate signed and delivered by , who was, at the date and execution thereof, the Mayor of the Town of Kearny, in the presence of said deponent, as the voluntary act and deed of said Town; and that the deponent thereupon signed the same as subscribing witness.

Sworn to and subscribed before me
this day of ,
197 .

Attorney at Law of New Jersey

Exhibit 4

SEVERANCE
LEASE AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.
ACTING ON BEHALF OF
MIMI REDEVELOPMENT ASSOCIATES I,
A LIMITED PARTNERSHIP IN FORMATION

THIS SEVERANCE LEASE AGREEMENT (the "First Severance Lease"), made as of the day of August, 1979, by and among THE TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the "Town"), and MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi"), acting on behalf of MIMI REDEVELOPMENT ASSOCIATES I, a partnership in formation, which will be qualified to do business under the provisions of the Urban Renewal Corporation and Associations Law of 1961 (N.J.S.A. 40:55C-20 et seq.), as amended and supplemented, and will have its principal office at 590 Belleville Turnpike, Kearny, New Jersey 07032 (the "Partnership")

W I T N E S S E T H

WHEREAS, Mimi, acting on behalf of the Partnership in the capacity of Lessee, and the Town, in the capacity of Lessor, have entered into a Lease of a parcel of land, consisting of acres and lying within the municipal boundaries of the Town, which is more particularly described on the map annexed hereto as Schedule A and incorporated herein by this reference (the " Redevelopment Parcel"), which Lease is hereinafter referred to as the "First Lease"; and

WHEREAS, in connection with the making of a mortgage loan by bank (the "Bank") to the Lessee Redeveloper, the Bank has requested that the Town and the Redeveloper enter into a "Severance Lease", pursuant to which the portion of the Redevelopment

Article 10. Maintenance and Repair

a. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall be responsible for and will take good care of the Demised Land and the buildings and improvements erected thereon, and the sidewalks and curbs adjoining the buildings upon the Demised Land and shall keep the same in good order and condition and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen. When used in this paragraph, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by Tenant shall be equal in quality and class to the original work. Tenant will do or cause others to do all necessary shoring of foundations and walls of the buildings and every other act or thing for the safety and preservation thereof which may be necessary by reason of any excavation or other building operation upon any adjoining property or street, alley or passageway.

b. Landlord shall not be required to furnish any services or facilities to the Demised Land. Landlord shall have no duty or obligation to make any alterations, additions, changes, improvements, replacements or repairs to, or to demolish, any buildings or improvements now or hereafter erected or maintained on the Demised Land. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Demised Land.

STATE OF NEW JERSEY)
) ss.
COUNTY OF)

BE IT REMEMBERED, that on this day of 1978, before me, the subscriber, a of the State of New Jersey, personally appeared who, being by me duly sworn, did depose and make proof to my satisfaction that he is the Town Clerk of the Town of Kearny, the Town named in the within Instrument; that he well knows the corporate seal of said Town of Kearny, the Town named in the foregoing Instrument; that the seal thereto affixed is the proper corporate seal of said Town of Kearny; that the same was so affixed thereto and the said Instrument signed and delivered by , who was, at the date and execution thereof, the Mayor of the Town of Kearny, in the presence of said deponent, as the voluntary act and deed of said Town; and that the deponent thereupon signed the same as subscribing witness.

Sworn to and subscribed
before me this day
of , 1978.

IN WITNESS WHEREOF, the Town of Kearny, New Jersey has caused this Severance Lease to be duly executed on behalf of the Town by the Mayor, and its seal to be hereunto duly affixed and attested by the Town Clerk of the Town of Kearny, New Jersey, and Mimi Development Corp., on behalf of Mimi Redevelopment Associates I, a limited partnership in formation, has caused this Severance Lease to be duly executed by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

ATTEST:

By: _____
Mayor

_____
Town Clerk

MIMI DEVELOPMENT CORP., on behalf of MIMI REDEVELOPMENT ASSOCIATES I, a Limited Partnership in Formation

ATTEST:

By: _____
Dolores Turco, President

_____
Mimi Turco, Secretary

Parcel which is affected by the lien of the mortgage to be made by the Bank is to be separately leased; and

WHEREAS, pursuant to Paragraph 12.e of the First Lease, the Town and the Redeveloper have agreed to execute such an instrument, and now wish to implement their prior agreement in this regard.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The leased property under this Severance Lease shall be the area outlined in red on Schedule A annexed hereto and incorporated herein by this reference (the "First Severance Lease Parcel").

2. The rent hereunder shall be a pro rata share of the rent payable under the First Lease, based upon the ratio between the acreage of the First Severance Lease Parcel and the total acreage of the First Redevelopment Parcel prior to such severance. The date for payment of such rent, the conditions relating to default in payment, and all other applicable provisions of the First Lease shall remain the same with respect to the First Severance Lease Parcel.

3. The Improvements to be constructed on the First Severance Lease Parcel are

4. The term of this Severance Lease shall end on

5. In all other respects, the terms and conditions of this First Severance Lease shall be the same as those of the First Lease; made applicable to the First Severance Lease Parcel.

Exhibit 6

Article 11. Damage or Destruction.

a.(1) If, during the term of this lease, all or any part of any building on the Demised Land shall be destroyed or damaged in whole or in part by fire or other insured casualty (including any casualty for which insurance was required pursuant to this Lease, but was not obtained) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate notice thereof.

(2) In that event, and subject to the provisions of Paragraph 11b (and without regard to whether: (i) such damage or destruction shall have been insured against (provided the same was required to be covered under this Lease); or (ii) the insurance proceeds, if any, shall be sufficient for the purpose; or (iii) any fee mortgagee shall permit such insurance proceeds to be used for such repairs, alterations, restoration, replacement or rebuilding), Tenant shall, at its sole cost and expense, promptly repair, alter, restore, replace, and rebuild the same, or reconstruct a similar or dissimilar building, together with improvements and equipment then owned by Tenant, so long as the value thereof shall be at least substantially equal to the value of that damaged and destroyed and which existed immediately prior to such occurrence.

(3) In no event shall Landlord be called upon to repair, alter, replace, restore or rebuild any such building, improvement or equipment or to pay any of the costs or expenses thereof.

(4) If Tenant shall fail or neglect to restore, repair and rebuild with reasonable diligence the building and

EXHIBIT 2

FINANCIAL AGREEMENT

THIS AGREEMENT (the "Financial Agreement") entered into as of the day of , 1979, by and between the TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the"Town") and MIMI REDEVELOPMENT ASSOCIATES I, a partnership having its principal office at 590 Belleville Turnpike, Kearny, New Jersey 07032 (the "Redeveloper"), which is qualified to do business under the provisions of the Urban Renewal Corporation and Associations Law of 1961 (N.J.S.A. 40:55C-20, et seq.), as amended and supplemented (the "Act"):

W I T N E S S E T H

WHEREAS, the Town has undertaken an urban renewal or redevelopment project within the Town of Kearny in furtherance of the objectives of Chapter 187 of the Public Laws of 1949 of the State of New Jersey, as amended and supplemented, in accordance with a redevelopment plan for the area of approximately 684.34 more or less acres lying within the municipal boundaries of the Town, which is more particularly described on the survey annexed hereto as Schedule A and incorporated herein by this reference (the "Redevelopment Area"), as shown on a plan designated "Kearny Meadowlands Redevelopment Area, Redevelopment Plan", a copy of which is annexed hereto as Exhibit 1 and is incorporated by this reference (the "Redevelopment Plan"); and

WHEREAS, the Plan contemplates, inter alia, the redevelopment by the Town of portions of the Redevelopment Area with buildings and improvements for industrial, commercial and business use and related offstreet parking; and

WHEREAS, the Town has entered into a Master Leasing and Option Agreement with MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi") dated

for the purpose of providing for the redevelopment of the Redevelopment Area (the "Master Agreement"); and

WHEREAS, under the Redevelopment Plan, an area within the Redevelopment Area, outlined in red on Schedule A hereto and bounded as described on Schedule B annexed hereto and incorporated herein by this reference (the "First Redevelopment Parcel") is designated for use as a major distribution center; and

WHEREAS, pursuant to the terms of the Master Agreement, Mimi has designated Redeveloper as its Permitted Assignee, as described therein, with respect to the redevelopment of the First Redevelopment Parcel; and

WHEREAS, pursuant to the Master Agreement, the Redeveloper entered into a lease with the Town (the "Lease") pursuant to which the Redeveloper has leased the First Redevelopment Parcel from the Town and has agreed to construct thereon Improvements consisting of a building complex containing at least 50,000 square feet, said Improvements together with said Redevelopment Parcel being referred to as the "First Project", and each such Improvement together with its Lot being referred to herein as a "Unit"; and

WHEREAS, in accordance with the Lease and in accordance with the Act, the Redeveloper has heretofore made written application to the Town for approval of the First Project; and

WHEREAS, the Town Council has heretofore by resolution adopted and approved the application, a copy of such application and a certified copy of such resolution of approval being attached hereto as Schedules "C" and "D" respectively; and

WHEREAS, the Town believes that the in lieu tax consideration to be given to each of the Improvements comprising part of the First Project pursuant to this Financial Agreement affords maximum redevelopment of the First Redevelopment Parcel and is, therefore, in the best interests of the Town and the health, safety, morals and welfare of its residents and is in accordance with the provisions of the Act and the public purposes pursuant to which the redevelopment of the Kearny Meadowlands Redevelopment Area has been undertaken and is being assisted in accordance with the applicable provisions of State law;

NOW, THEREFORE, it is mutually agreed as follows:

1. The Redeveloper represents that the application attached to this Financial Agreement as "Schedule C" and incorporated herein by this reference sets forth the manner in which the Redeveloper proposes to develop, manage and operate the First Project and each of the Units therein, the plans for financing the First Project, including, but not limited to, the estimated total First Project Cost, the interest and amortization rates on the total First Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amounts of projected permanent mortgage financing, and the proposed First Project rental schedules and lease terms as well as the projected "Annual Gross Revenue" (hereinafter defined) and net profit for the First Project. Redeveloper covenants and agrees to use its best efforts to conform in the development, construction and operation of the First Project to the matters and things set forth in said application, that is, the manner in which Redeveloper proposes to develop, manage and operate the First Project, and the plans for financing the First Project, it being understood, however, with particular respect to the First Project Cost (and the cost of each Unit thereof), interest rate, financing terms

and mortgage amortization, rental schedules and lease terms, that the same are projected and estimated and may be modified as particular circumstances may require, but that in all material respects it is the intent and agreement of the Redeveloper to comply as closely as shall be practicable with the information and representations set forth in said application.

2. Subject to the provisions of Paragraph 16, the Town hereby grants to the Redeveloper, but only to the extent hereinafter expressly set forth in Paragraph 3(a) hereof, exemption from real property taxation on the Improvements to be constructed on the First Redevelopment Parcel for a period of not more than twenty (20) years from the date of the execution of this Financial Agreement or for a period of not less than fifteen (15) years from the "date of first operation of the Unit" of the First Project (as hereinafter defined), whichever period ends first.

3. (a) (1) (A) The Redeveloper shall pay for each year for which tax exemption is claimed and granted, as an annual service charge in lieu of real property taxes on the Improvements for each Unit required to be constructed by the Lease, beginning on the date of first operation of that Unit, an amount equal to fifteen (15%) percent of the Annual Gross Revenue received by the Redeveloper from all Improvements in that Unit.

(B) Since the date of first operation of a Unit may not be the start of a calendar year, and the in lieu payments are due on a calendar year basis, the aforesaid annual service charge shall be adjusted on a pro rata basis with respect to any year in which the period after the date of first operation of a Unit is less than a full calendar year.

(b) As used in this Financial Agreement, the term "Annual Gross Revenue" shall include total annual gross rentals and other income received by Redeveloper from the First Project, but shall not include payments for insurance, utilities, assessments or any maintenance expenses (including maintenance expenses of common areas), made directly to Redeveloper or by a tenant for the tenant's own account pursuant to any occupancy lease, it being the intent of this provision to recognize that Redeveloper's

leases with its tenants will likely by "net" leases and that under such leases these amounts are ordinarily paid by the tenant.

(c) As used in this Financial Agreement, the term "date of first operation of the Units" is defined as the date on which actual occupancy of a portion of the building or Improvement by a tenant of said Unit first occurs.

4. Against the annual services charge as provided herein, the Redeveloper shall be entitled to a credit for the amount, without interest, of the real estate taxes on the land comprising the First Redevelopment Parcel paid by it in the last four (4) preceding quarterly installments.

5. The Redeveloper further covenants and agrees as follows:

(a) To limit its profits and dividends payable in accordance with the provisions of the Act.

(b) To pay the annual service charge as provided for in Paragraph 3 hereof, annually, within thirty (30) days after the close of each calendar year. In the event that such payment is not made, the Town may proceed to enforce the collection thereof in the same manner and with the same rights as are applicable to delinquent real estate taxes or in any other manner authorized by the Act.

(c) To submit annually, within ninety (90) days after the close of each of its fiscal years, its auditor's reports of income from and expenses related to the First Project, to the Mayor and governing body of the Town, which reports shall remain confidential except as otherwise provided by law.

(d) Upon request of the Town, to permit inspection of the property, equipment, buildings and other facilities of the Redeveloper, and to permit examination and audit of any of its books, contracts, records, documents and papers relating to this Agreement or the First Project, by duly authorized representatives of the Town, provided same are at reasonable hours on reasonable

notice and in the presence of designated representatives of Redeveloper

(e) At all times prior to the expiration or other termination of this Financial Agreement, to remain bound by the provisions of the Act.

(f) Not to effect or execute any agreement, lease, conveyance, or other instrument, whereby the First Project, or any part thereof, is restricted upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease or occupancy thereof, nor to discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease, or rental, or in the use or occupancy, of the First Project or any Improvement erected or to be erected thereon, or any part thereof, and to comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, sex or marital status.

(g) During the period of tax exemption as provided herein, to be subject to limitation of profits payable by it pursuant to the provisions of N.J.S.A. 40:55C-66, and Redeveloper shall have the right to establish reserves against unpaid rentals, and reasonable contingencies, which shall include but shall not be limited to the cost of renovating portions of the Units from time to time for purposes of rerenting, and/or vacancies in an amount not exceeding ten (10%) per cent of the gross revenues of the Redeveloper from the First Project for the fiscal year preceding the date in which a determination is being made with respect to permitted "net profits" as provided in N.J.S.A. 40:55C-66. In computing "net profit" as provided in N.J.S.A. 40:55C-50, the Redeveloper shall deduct from gross revenues an annual amount sufficient to amortize the "total Project cost" and/or "total Unit cost", as defined in the Act, as the case may be, over the period of 25 years. For this purpose, in computing "total Project cost" or "total Unit cost", the rentals shall be capitalized at ten (10%) per cent.

(h) Within ninety (90) days after the end of its fiscal year, to pay to the Town any profits in excess of the profits permitted it under the provisions of the Act.

6. It is understood and agreed that, subject only to the provisions of Paragraphs 2 and 16, and in all other respects notwithstanding anything herein expressed or implied to the contrary, at the end of twenty (20) years from the date of the execution of this Financial Agreement, or at the end of fifteen (15) years from the date of first operation of a particular Unit of the First Project, as defined herein, whichever period ends first, the tax exemption upon that particular Unit of the First Project shall thereupon absolutely cease, and the Lot and Improvement comprising such Unit of the First Project shall thereupon be assessed and taxed according to general law as other property in the Town is assessed and taxed, and, at the date on which the tax exemption upon the entire First Project absolutely ceases, as described above, all restrictions and limitations herein contained as provided by law shall absolutely terminate and be at an end and the Redeveloper shall thereupon render its final account to the Town.

7. Before having received a Certificate of Completion in accordance with the terms and conditions of the Lease with the Town, the Redeveloper shall not voluntarily transfer the First Project, or any Unit thereof, to anyone other than a qualified urban renewal association or corporation, and any such transfer shall be subject to the condition that the transferee shall assume all of the Redeveloper's obligations under this Financial Agreement and to the further conditions that the transferee otherwise qualify under all other applicable requirements of law and that the Town specifically consent thereto. The Town hereby consents to Redeveloper's voluntary transfer of the First Project, or any Unit thereof, to another entity qualified under the Act owning no other Project at the time of transfer, as provided by N.J.S.A. 40:55C-60, at any time after Redeveloper has received a Certificate of Completion with respect to the First Project (or Unit, as the case may be) then being so transferred.

8. The Redeveloper may at any time after the expiration of one (1) year from the completion date of the entire First Project (which shall be the date of first operation of the last Unit) notify the Town that as of a certain date designated in said notice it relinquishes its tax exemption status. As of the date so set, the tax exemption, the service charges, the profit restrictions, and all other restrictions and limitations imposed by this Financial Agreement and by the Act shall terminate.

9. Upon any termination of such tax exemption, obligation and restrictions, whether by affirmative action of the Redeveloper as provided in Paragraph 8 above or by the provisions of the Act pursuant to this Financial Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Redeveloper, and within ninety (90) days after the date of such termination the Redeveloper shall pay to the Town a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40:55C-66, as well as the excess profit, if any, payable pursuant to N.J.S.A. 40:55C-66, and pursuant to Paragraph 5 of this Financial Agreement by reason of the treatment of such date as the end of the fiscal year.

10. Subject to the provisions of Paragraphs 11(c), 13b, and 13c, in the event of a default in or breach of this Financial Agreement by Redeveloper, if such default or breach is not cured within ninety (90) days after receipt by Redeveloper of written demand by the Town to do so, then the Town may terminate this Financial Agreement and such termination shall be deemed to be a termination of tax exemption as herein provided.

11. The Redeveloper shall give the Town written notice of any mortgage loan providing for the advancing of funds either for temporary or construction loans or for permanent financing in respect to the Land, Improvements, or both, for each Unit constituting the First Project ("mortgage Loan"), together with the name and address of the holder of such Mortgage Loan. Anything contained herein to the contrary notwithstanding, in order to meet the terms, conditions and provisions required to secure a Mortgage Loan to

finance the First Project or a Unit thereof, Redeveloper and the Town further agree, for the benefit and protection of the holder of a Mortgage Loan, provided the Redeveloper has given the Town notice of such Mortgage Loan, that:

(a) The Redeveloper will keep, observe and perform each and every provision of this agreement and so every other act and all things required by law to keep and continue this agreement in full force and effect for the full period provided for herein except as may otherwise be agreed to by the holder of the Mortgage Loan:

(b) The Town and the Redeveloper will make no agreement expressly, impliedly, or by conduct, serving to modify, alter, add to, terminate or delete, any provision of this Agreement and will exercise no option or right hereunder unless the Redeveloper has prior thereto obtained and furnished to the Town the written consent of the holder of the Mortgage Loan:

(c) If there is any default by the Redeveloper hereunder, and if such default has not been waived by the Town and has not been cured (or, if appropriate, the curing of such default has not commenced) by Redeveloper (or the Permitted Assignee involved in such default, as the case may be) after due notice thereof, within the period therefor stated in this Financial Agreement, the Town agrees that before taking any step which it may then be entitled to take, it will at that time first notify the holder of the Mortgage Loan thereof and then provide a reasonable opportunity to cure the same in light of the nature of the default and the available means to correct it, but in any event shall allow not less than thirty (30) days from the date of such notice to the Mortgagee of such default, and, if and to the extent that the Mortgagee cures any default, or causes the same to be cured, the Mortgagee shall be subrogated to the rights of the Town hereunder and under the applicable Lease, and shall have the right, but not the duty, to attorn to the position of the Redeveloper hereunder and under the applicable Lease, as more particularly set forth in the Master Agreement and in Paragraphs 13b and c hereof;

(d) All the terms and provisions of the Redevelopment Projects Mortgage Loan Act of 1967 (N.J.S.A. 55:17-1 to 55:17-11) shall be made a part of and included herein with like effect as though recited at length;

(e) No waiver, election, acquiescence, and estoppel or consent on the part of or against either party hereto shall affect or be binding upon the holder of the Mortgage Loan unless the Redeveloper has obtained and furnished to the Town the prior written consent of the holder of the Mortgage Loan. and

(f) Nothing in this agreement shall be construed in any way as to adversely affect the right of the Town to receive the contractual payments and other substantive rights to which it may be entitled under

this agreement, it being the primary intention hereof that all of the terms, conditions and provisions hereof shall be and remain in full force and effect for the benefit and protection of the holder of the Mortgage Loan, notwithstanding any default or breach by the Redeveloper, its successors or assigns, so long as the Town receives, whether from the Redeveloper or from its lawful transferee or the holder of the Mortgage Loan, its subsidiary, nominee or assignee, the performance to be provided to it.

12. Neither the Redeveloper nor any of its partners, limited or general, shall be personally liable for the payment of the Annual Service Charge nor for the payment of any tax or assessment which may be levied or assessed against any land or building now or hereafter constituting all or a portion of the First Project.

13. (a) Any Notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested, or delivered personally and: in the case of the Redeveloper, addressed to its General Partner, with a first copy to Mimi, addressed to its Chief Executive Officer, and with a second copy to Mimi's Corporate Counsel, each of the foregoing having an address for this purpose at 590 Belleville Turnpike, Kearny, New Jersey 07032; in the case of the Town, addressed to the Mayor of Kearny, New Jersey, with a copy to the Town Attorney, each of the foregoing having an address for this purpose at Town Hall, Kearny, New Jersey; or to any such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the others as provided in this Paragraph.

(b) Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Financial Agreement, the Town shall at the same time forward a copy of such notice or demand to each holder of any Mortgage Loan authorized by this Agreement at the last known address of such holder shown in the records of the Town; provided, however, that the forwarding to the Mortgagee of a copy of a notice or demand to the

Redeveloper, pursuant to this Paragraph 13b, shall not constitute the giving of the notice or demand required by Paragraph 11(c).

(c) (1) After any breach or default referred to in the foregoing paragraph 13b., each such holder shall (insofar as the rights of the Town are concerned) have the right, at its option, to cure or remedy such breach or default (to the extent that it relates to the part of the Redevelopment Area covered by its Mortgage Loan) and to add the cost thereof to its Mortgage Loan.

(2) Any such holder or any permitted transferee of any such holder who shall cure or remedy any breach or default which is referred to in the foregoing Paragraph 13b. shall be entitled to the benefits of the tax abatement previously granted to the Redeveloper prusuant to the Fox-Lance Act and this Financial Agreement, to the same extent that the Redeveloper would then have been if no default had occurred.

14. (a) In the event of any dispute between the parties concerning this Financial Agreement, the matters in controversy shall be resolved by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in the Superior Court of New Jersey. Costs for said arbitration shall be borne equally by the parties.

(b) Anything in the foregoing to the contrary notwithstanding: (1) any dispute between the parties hereto concerning any provision of this Financial Agreement shall be governed by the Laws of the State of New Jersey; and (2) no arbitrator shall have the power or authority to amend, alter, or modify any part of this Agreement, in any way.

15. If any clause, sentence, subdivision, paragraph, section or part of this Financial Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part hereof directly involved in the controversy in which said judgment shall have been rendered.

16. This Financial Agreement may be modified from time to time only by written agreement duly executed by the parties hereto, provided said modification is consistent with the Act; provided, however, that the parties hereto hereby agree that if the Act is amended during the period descirbed in Paragraph 2 or 6 hereof, with the result that the maximum period of tax exemption previously authorized by the Act is increased, then the period for which the exemption from real property taxation described in Paragraph 3 hereof is granted hereunder shall be automatically increased (but not by more than five (5) years), so that the total period of such exemption granted hereunder shall have such new maximum duration (but not more than twenty (20) years) and the relevant operative provisions of this Financial Agreement shall be deemed automatically amended, nunc pro tunc; provided, further, that if either party deems it appropriate or necessary, the parties hereto shall execute an appropriate amendment to this Financial Agreement, no later than sixty (60) days after the enactment of such amendment to the Act.

IN WITNESS WHEREOF, the Town has caused this Financial Agreement to be duly executed in its name and on its behalf by the Mayor, and the Redeveloper has cuased this Financial Agreement to be duly executed on its behalf by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

ATTEST:

By: _____
David C. Rowlands, Mayor

_____
Town Clerk

MIMI DEVELOPMENT ASSOCIATES I

ATTEST:

By: _____
Dolores Turco, President

_____
Mimi Turco, Secretary

RESOLUTION

BY MAYOR ROWLANDS

WHEREAS, the Mayor and Council of the Town of Kearny are desirous of encouraging the development of some 638 acres of vacant meadowlands in the Town of Kearny, and

WHEREAS, the said Mayor and Council have determined to lease said lands to Mimi Development Corporation as set forth in a Master Leasing and Option Agreement, and Lease Agreement, copies of which are attached hereto and incorporated herein, and

WHEREAS, the execution of said Master Leasing and Option Agreement and Lease Agreement is accomplished under the general provisions of the Urban Renewal Corporation and Association Law of 1961 (Chapter 49 of the Public Laws of 1961, N.J.S.A. 40:55C-49 et seq.), and

WHEREAS, the Mayor and Council have obtained a re-use appraisal of the adjacent properties subject to Master Leasing and Option Agreement and First Lease with Harts Mountain Industries and are satisfied that the rents established therein represent the fair rental value of said properties for the uses specified in the Redevelopment Plan heretofore approved by the Mayor and Council, with respect to lands leased by Mimi Development Corporation.

NOW THEREFORE BE IT RESOLVED, by the Council of the Town of Kearny, in the County of Hudson, that the Mayor and Town Clerk respectively be and are hereby authorized to execute the attached Master Leasing and Option Agreement and Lease Agreement between the Town of Kearny and Mimi Development Corporation on behalf of the Town of Kearny, and

BE IT FURTHER RESOLVED that the Town Clerk is further authorized and directed to affix the Corporate Seal of the Town

of Kearny thereto.

Adopted: August 8, 1979

I certify that the foregoing Resolution was adopted by the Council on August 8, 1979.

TOWN CLERK

I hereby approve the foregoing Resolution this 8th day of August, 1979.

MAYOR

LEASE AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.
ACTING ON BEHALF OF
MIMI REDEVELOPMENT ASSOCIATES I,
A LIMITED PARTNERSHIP IN FORMATION

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CLOSING DOCUMENTS

LEASE AGREEMENT
BETWEEN
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MIMI DEVELOPMENT CORP.
ACTING ON BEHALF OF
MIMI REDEVELOPMENT ASSOCIATES I,
A LIMITED PARTNERSHIP IN FORMATION

CLOSING DATE: August 8, 1979

Document No.	Title
1	Lease Agreement Between The Town of Kearny and Mimi Development Corp., Acting on Behalf of Mimi Redevelopment Associates I, a Limited Partnership in Formation (the "Lease Agreement")
2	Schedule A to Lease Agreement
3	Schedule B to Lease Agreement
4	Exhibit 1 to Lease Agreement
5	Exhibit 2 to Lease Agreement
6	Exhibit 3 to Lease Agreement
7	Exhibit 4 to Lease Agreement
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LEASE AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.
ACTING ON BEHALF OF
MIMI REDEVELOPMENT ASSOCIATES I,
A LIMITED PARTNERSHIP IN FORMATION

LIST OF SCHEDULES AND EXHIBITS

DESIGNATION	TITLE
Schedule A	Map of Redevelopment Area
Schedule B	List of Existing Encumbrances, etc.
Exhibit 1	Redevelopment Plan
Exhibit 2	Form of Financial Agreement
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LEASE AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.
ACTING ON BEHALF OF
MIMI REDEVELOPMENT ASSOCIATES I,
A LIMITED PARTNERSHIP IN FORMATION

THIS LEASE AGREEMENT (the "First Lease"), made as of the ~~First~~ 8th day of ~~July~~ August, 1979, by and among THE TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the "Town"), and MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi"), acting on behalf of MIMI REDEVELOPMENT ASSOCIATES I, a partnership in formation, which will be qualified to do business under the provisions of the Urban Renewal Corporation and Associations Law of 1961 (N.J.S.A. 40:55C-20, et seq.), as amended and supplemented, and will have its principal office at 590 Belleville Turnpike, Kearny, New Jersey 07032 (the "Partnership")

W I T N E S S E T H

WHEREAS, the Town is the owner in fee simple of a tract of land, consisting of approximately 638.84± acres and lying within the municipal boundaries of the Town, which is more particularly described on the map annexed hereto as Schedule A and incorporated herein by this reference (the "Redevelopment Area"); and

WHEREAS, the Town is desirous of improving the Redevelopment Area for the purpose of increasing employment opportunities and tax ratables which will benefit the residents and inhabitants of the Town; and

WHEREAS, the Town has urdertaken a redevelopment project for the proper utilization and redevelopment of the Redevelopment Area (the "Redevelopment Area Project") in order to facilitate its orderly commercial and industrial development, and to secure these ends finds it necessary to provide financial assistance in

the form of tax abatement pursuant to the "Urban Renewal Corporation and Association Law of 1961", Chapter 40 of the Public Laws of 1961, N.J.S. 40:55C-40, et seq., as amended and supplemented (the "Fox-Lance Act"); and

WHEREAS, the Redevelopment Area Project is being undertaken in accordance with a redevelopment plan for the Redevelopment Area designated as the"Kearny Meadowlands Redevelopment Area Redevelopment Plan", a copy of which is annexed hereto as Exhibit 1, and is incorporated herein by this reference (the "Redevelopment Plan"); and

WHEREAS, under the Redevelopment Plan, an area within the Redevelopment Area, outlined in red on Schedule A hereto, which outline is incorproated herein by this reference (the "First Redevelopment Parcel") is designated for use as a major distribution center; and

WHEREAS, the Town has entered into a Master Leasing and Option Agreement with Mimi, dated as of July 31, 1979, providing for the redevelopment of the Redevelopment Area, in accordance with the Redevelopment Plan (the "Master Agreement"): and

WHEREAS, Mimi will designate the Partnership as its Permitted Assignee, pursuant to the terms of the Master Agreement, with respect to the redevelopment of the First Redevelopment Parcel, after the Partnership is formed and duly qualified, and the Town has agreed to such designation; and

WHEREAS, the Partnership, after such designation and assignment, will be the Redeveloper, with respect to the First Redevelopment Parcel; and

WHEREAS, the Town now desires to lease the First Redevelopment Parcel to Mimi, acting on behalf of the Partnership/Redeveloper, pursuant to this Lease relating to the redevelopment of the First Redevelopment Parcel, with a view to preventing blight and blighting influences within the First Redevelopment Parcel and to facilitating the redevelopment of this Parcel in accordance with the

purposes and goals of the Redevelopment Plan, and, more specifically, in order to permit the construction thereon by the Redeveloper of a complex of at least 50,000 square feet; and

WHEREAS, in accordance with the Master Agreement, Mimi, acting on behalf of the Redeveloper, has made a proposal to the Town to redevelop the First Project (as hereinafter defined); and

WHEREAS, the Town has considered and approved Mimi's proposal, on behalf of the Redeveloper, for the redevelopment of the First Redevelopment Parcel; and

WHEREAS, the Town has determined the fair value of the Redevelopment Area for the uses specified in the Redevelopment Plan; and

WHEREAS, the Town is now prepared to lease the First Redevelopment Parcel to Mimi, acting on behalf of the Redeveloper, and Mimi, acting on behalf of the Redeveloper, is willing to lease the First Redevelopment Parcel from the Town and to redevelop the First Redevelopment Parcel, in each case in accordance with the terms of this Lease; and

WHEREAS, the Town believes that the leasing and redevelopment of the First Redevelopment Parcel pursuant to this Lease, and the fulfillment generally of this Lease, are in the vital and best interests of the Town, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Redevelopment Area Project has been undertaken and is being assisted;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

1. Definitions:

As used herein, each of the following terms shall have the meaning assigned to it, as follows:

a. "Commencement Date" of this Lease of the First Redevelopment Parcel: as defined in Paragraph 4, subject, however, to the provisions of Paragraph 15.

b. "Completion" of any Improvement: issuance of a Certificate of Occupancy with respect thereto by the appropriate governmental body or agency.

c. "First Improvements": as defined in Paragraph 6c.

d. "First Lease": as defined in the Preamble.

e. "First Project": the First Redevelopment Parcel and the First Improvements.

f. "First Redevelopment Parcel": as defined in the Recitals.

g. "Fox-Lance Act": as defined in the Recitals.

h. "HMDC": the Hackensack Meadowlands Development Commission, or any successor governmental body.

i. "Mimi": as defined in the Preamble.

j. "Impositions": as defined in Paragraph 5.

k. "Improvement": the building or buildings and/or other related structures to be erected on any specifically indentified Lot.

l. "Land Improvements": as described in Paragraph 6b.

m. "Leased Property": as defined in Paragraph 12.

n. "Lease Term": as defeined in Paragraph 4.

o. "Lease Year": a period of twelve (12) calendar months beginning on the Commencement Date of this Lease, or on any anniversary thereof.

p. "Lessee": the entity which shall be the tenant under this Lease; such entity shall initially be Mimi, and thereafter, shall be the Partnership/Redeveloper, as a Permitted Assignee.

q. "Lessor": the Town.

r. "Lot": as the sense and circumstances require, the entire Redevelopment Parcel, or a specifically designated portion thereof referable to and part of a specific Unit, if the Project referable to such Redevelopment Parcel is undertaken in Units.

s. "Master Agreement": as defined in the Recitals.

t. "Mortgage Loan": as defined in Paragraph 12.

u. "Permitted Assignee": any person or entity to whom an assignment or transfer has been made in accordance with Paragraph 11.

v. "Permitted Assignment": any assignment or transfer made in accordance with Paragraph 11.

w. "Project": an entire Redevelopment Parcel and all Improvements thereon; if any Project is undertaken in Units, the term means the totality of all such Units.

x. "Redeveloper": the entity which shall have the rights and duties of the Redeveloper hereunder with respect to the First Redevelopment Parcel.

y. "Redevelopment Area": as defined in the recitals.

z. "Redevelopment Area Project": as defined in the Recitals.

aa. "Redevelopment Parcel": a particular section of the Redevelopment Area, specifically numbered and identified and described as one or more Lots in one or more Building Permit applications, as the portion of the Redevelopment Area with respect to which a particular Improvement or related series of Improvements is proposed to be constructed, and which is the subject of a Lease.

bb. "Redevelopment Plan": as defined in the Recitals.

cc. "Severance Lease" or "Severance Leases": as defined in Paragraph 12.

dd. "Town": as defined in the Preamble.

ee. "Unit": a particular Lot and the related Improvement, specifically numbered and identified and described as such, in the same manner as a Lot is identified, if the Project of which it is a part is undertaken in Units.

2. Warranties of Title, etc.

In order to induce Mimi and Redeveloper to enter into this Agreement, as to expend the sums of money for the redevelopment of the First Redevelopment Parcel required hereunder, and intending Mimi and Redeveloper to rely thereon, the Town hereby warrants and represents to Mimi and Redeveloper that:

a. (1) The Town is the sole owner in fee simple of, and has good and marketable title to, the First Redevelopment Parcel, free and clear of any and all liens, encumbrances, equities, or claims, except those described in Paragraph 3 hereof, and except such as shall be disclosed by restrictions of record, provided that no such restriction shall render the Town's title to the First Redevelopment Parcel other than "good and marketable".

(2) For purposes of this Agreement, the Town's title to the First Redevelopment Parcel shall be deemed to be "good and marketable" if a recognized reputable title insurance company authorized to do business in the State of New Jersey issues to the Town at the execution of this First Lease a standard New Jersey Realty Board form of title policy insuring the Town's ownership of the fee estate in the First Redevelopment Parcel, and simultaneously issues to Mimi, on behalf of the Redeveloper, a standard New Jersey Realty Board form of title policy insuring the Redeveloper's ownership of the only leasehold estate in the First Redevelopment Parcel and each such policy contains only the standatd printed exceptions, and the amount of the premium for that policy is calculated at the issuing company's regular rates. If such a policy is not obtainable, title to all or the affected portion of the First Redevelopment Parcel shall be deemed not good and marketable, and Redeveloper will have no obligation to lease the affected portion of the First Redevelopment Parcel and may refuse to consummate the entire transaction contemplated by this First Lease, without penalty of any kind.

(3) Notwithstanding anything to the contrary in the foregoing, if a recognized reputable title insurance company authorized to do business in the State of New Jersey is willing to issue a policy to Mimi, on behalf of the Redeveloper, as the named insured, insuring Redeveloper's title to the leasehold

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estate in the subject Parcel, but at a premium based on a rate higher than its regular rate, and if the Town agrees to pay and does pay the amount by which the premium charged by the title insurance company exceeds one calculated at its regular rate, then, at Redeveloper's sole and exclusive option, Redeveloper may consummate the transaction as so modified.

b. Schedule B, annexed hereto and incorporated herein by this reference, contains a true and complete list of all existing encumbrances, conditions, rights, covenants, easements, restrictions, and rights-of-way, affecting the Redevelopment Area, including the First Redevelopment Parcel; the Town will not further encumber or restrict the use of all or any part of the First Redevelopment Parcel after the date of execution of this Lease without the prior written consent of the Redeveloper (or Mimi, on its behalf).

c. No part of the Redevelopment Area is presently subject to any claim of the State of New Jersey as tidelands and the Town has heretofore obtained all riparian rights affecting title to the Redevelopment Area.

d. The Town will take all necessary steps to assure that the First Redevelopment Parcel may be leased to Redeveloper for the purposes herein set forth, and may be redeveloped by Redeveloper in accordance with the terms of this Lease.

e. The Redevelopment Area has been, or will be, duly and properly declared "blighted" by the governing body of the Town in accordance with the applicable provisions of the Blighted Area Act, N.J.S.A. 40:55-21.1-et seq. and of the Fox-Lance Act.

f. The Town will take all necessary measures to assure the abatement of property taxes in accordance with the provisions of the Fox-Lance Act for all Improvements to be made by Redeveloper in the First Redevelopment Parcel; without limiting the generality of the foregoing, the Town shall make the benefits of the Fox-Lance Act available to the fullest extent with respect to this Lease of the First Redevelopment Parcel; such Financial Agreement shall be in the form attached hereto as Exhibit 2,

which is incorporated herein by this reference, and shall be executed no later than the date which is sixty (60) days after the date of written notice by the Lessee/Redeveloper to the Town stating that the Lessee/Redeveloper is ready, willing and able to enter into the Financial Agreement, providing the necessary data required by the Fox-Lance Act, and requesting that the Town execute the same.

g. The Town will take all necessary and appropriate measures to assure that a solid waste compactor or baler will not be constructed on property adjacent to the Redevelopment Area, and to assure that no refuse or waste dumping or disposal activity, or any activity related thereto, is conducted on property adjacent to the Redevelopment Area. All such measures shall be completed prior to the Commencement Date of this First Lease and their completion shall be a condition to Mimi and/or Redeveloper's obligation to proceed to construct any Improvement or Land Improvement.

h. The Town will take all necessary and appropriate measures to enable Mimi and the Town to secure a determination from the Federal Interstate Commerce Commission (the "I.C.C.") that all or any specified portion of the Redevelopment Area has the status of a "free zone" under the applicable laws and regulations, including, without limitation, cooperating fully with Mimi in connection with each application to the I.C.C. for such a ruling; provided, however, that, in fulfilling its obligations under this Paragraph 2h, the Town may, but shall not be required to, undertake any action that would require it to incur legal fees.

i. The Town will take any and all other or further action necessary or appropriate to implement this Lease or to effectuate its purposes, subject to the limitations of Paragraph 2h.

3. Lease of First Redevelopment Parcel

Subject to all of the terms, covenants and conditions of this Lease, the Town hereby leases the First Redevelopment Parcel to Mimi acting on behalf of the Redeveloper, and Mimi,

acting on behalf of Redeveloper, hereby leases the First Redevelopment Parcel from the Town, to have and to hold the same for the term and at the rent as hereinafter provided, SUBJECT TO:

(1) all existing encumbrances, conditions, rights, covenants, easements, restrictions and rights-of-way of record, which are listed on Schedule B, annexed hereto and incorporated herein by this reference; and

(2) applicable zoning, land use, and building laws, regulations and codes; and

(3) such matters as may be disclosed by a current inspection or survey; and

(4) building and use restrictions specified in the Redevelopment Plan; and

(5) the conditions subsequent provided in Paragraph 14 hereof; and

(6) all other conditions, covenants and restrictions set forth or referred to elsewhere in this Lease.

4. Lease Term

a. The Term of this Lease will be a period of seventy-five (75) years, beginning on the Commencement Date hereof.

b. The Commencement Date of this Lease shall be the first day of the calendar month coinciding with or next following the last to occur of:

(1) The date to which is six (6) months subsequent to the date of the execution of this Lease; or

(2) The date of receipt by Redeveloper from HMDC, the U.S. Army Corps of Engineers, and every other governmental body having jurisdiction with respect thereto, of all permits and approvals which are necessary as a precondition to commencement of physical construction of the first Unit of the Improvements proposed to be constructed on the subject Redevelopment Parcel;

provided, however, that it is understood and agreed that, prior to such Commencement Date, Mimi and/or the Redeveloper shall be permitted to enter upon the subject Redevelopment Parcel for the purpose of doing test soil borings, engineering surveys, and similar preparatory work consistent with the uses contemplated by this Lease, and the Master Agreement, and that none of this activity will be deemed to be either the actual commencement of any construction activity, or the waiver of any requirement of this Paragraph 4b. for any purpose of this Lease of the First Redevelopment Parcel or for any purpose of the Master Agreement.

5. Rental

a. Redeveloper agrees to pay to the Town during the Term of this Lease of the First Redevelopment Parcel:

(1) (A) initial rent at the rate of Four Thousand ($4,000.00) Dollars per calendar year, apportioned pro rata for any partial year. This initial rent shall be payable in quarterly installments, in advance, on the first day of January, April, July, and October, without notice or demand, and without deduction, abatement or set-off for any reason whatsoever, except as in this Lease or in the Master Agreement specifically provided, beginning on the Commencement Date of this First Lease, and ending on the date of issuance of a Certificate of Occupancy by both the Town and HMDC with respect to the Improvements on the First Redevelopment Parcel; provided, however, that the total amount of such initial rent which shall be currently due and payable to the Town with respect to any particular calendar year shall not, under any circumstances, exceed Four Thousand ($4,000.00) Dollars; and provided, therefore, that if, at any time, the payment of such initial rent shall be currently required under more than one Lease, then the total amount of such initial rent which is due and payable for such portion of such calendar year shall be apportioned among the various leased Redevelopment Parcels with respect to which such initial rent is then imposed, pro rata, on the basis of their respective acreages; and/or

(B) operating rent at the rate of One Thousand Five Hundred ($1,500.00) Dollars per acre per annum (which shall be apportioned pro rata) for the subject First Redevelopment Parcel. Such rental shall be payable in quarterly installments, in advance, on the first day of January, April, July, and October, during each year of the Lease Term of this Lease of the First Redevelopment Parcel, without notice or demand, and without deduction, abatement or set-off for any reason whatsoever, except as in this Lease specifically provided, commencing from the earlier of

(i) the date which is two (2) years from the Commencement Date of the Lease Term hereof, or

(ii) the date of issuance of a Certificate of Occupancy by both the Town and the HMDC with respect to the Improvements on the First Redevelopment Parcel; together with

(2) as additional rent hereunder, to be paid no later than the final due date therefor, without interest or penalty, all real estate taxes, assessments, occupancy taxes, sewer rents, water charges and all other taxes and charges including all in lieu of tax payments (sometimes referred to collectively as "Impositions") levied, assessed, or imposed on, or attributable to, the First Redevelopment Parcel, or arising from the use, occupancy or possession of the Improvements to be erected by Redeveloper on the First Redevelopment Parcel. It is acknowledged that the Master Agreement recites that the parties thereto intended that each Improvement to be erected in the Redevelopment Area shall be the subject of a separate tax assessment and that a separate tax bill shall be issued for each Unit of each Redevelopment Project. Redeveloper reserves the right to contest any and all individual assessments for Impositions, pursuant to law, before the officer or body designated for the appeal of such matters; provided, however, that notwithstanding any such contest, Redeveloper shall pay the contested Imposition in the manner and on the dates provided therefor, unless such payment is deemed at law to operate as a bar to such contest, or would materially interfere with the prosecution of same (in which case, such nonpayment shall not constitute a default); together with

(3) Notwithstanding anything to the contrary herein, if the Lease Term hereunder commences by virtue of the occurrence (or anniversary) of an event described herein, and if such event (or anniversary) occurs on a date which is not the first day of a calendar month (and thus precedes the Commencement Date of the Lease Term) then so much of the foregoing described rentals as are otherwise then payable shall be due and payable for such fraction of a month, pro rata, as part of the next-due installment of such rent under this Lease, and, if such event (or anniversary) or such Commencement Date occurs on a date which is not the first day of a calendar quarter (and thus precedes the first rent payment date of the Lease Term hereunder) then so much of the foregoing described rentals as are otherwise then payable shall be due and payable for such fraction of a calendar quarter, pro rata, as part of the next-due installment of such rent under this Lease.

b. Notwithstanding anything to the contrary herein, the Town shall make the benefits of the Fox-Lance Act available to the fullest extent with respect to the First Redevelopment Parcel, under the terms of this Lease; for this purpose, the Town shall enter into a Financial Agreement with the Lessee/Redeveloper, in accordance with the provisions of Paragraph 2.f.

6. Construction of Improvements

a. Redeveloper agrees to use its best efforts through the term of this Lease to redevelop the First Redevelopment Parcel in order to generate employment and tax ratables for the Town by the construction of such buildings and other facilities permitted by law.

b. It is acknowledged that, in the Master Agreement, Mimi agreed to substantially complete at its sole cost and expense within two (2) years of the Commencement Date of the First Lease, certain land improvements benefiting the Redevelopment Area (the "Land Improvements") (which shall include, but not be limited to, fill, roads, utility access lines, lights, etc.) having a value of at least One Hundred Fifty Thousand ($150,000.00) Dollars, and such Land Improvements shall be pursuant to schematic plans approved by the Town, and shall be designed, installed and constructed so

as to provide access to, and public utilities for, the Redevelopment Area. Redeveloper hereby agrees to take all action necessary to enable Mimi to fulfill this obligation.

c. No later than the second anniversary of the Commencement Date of this First Lease, Redeveloper agrees to construct on the First Redevelopment Parcel leasable buildings (the "First Improvements"), in accordance with the preliminary plans heretofore approved by the Town, as follows:

A complex consisting of at least 50,000 square feet of space for warehousing or manufacturing or distribution.

d. The construction of the First Improvements shall be commenced within twelve (12) months after the Commencement Date of this First Lease, except as otherwise provided herein, and all of the First Improvements shall be substantially completed within twenty-four (24) months after the date of commencement of construction, as more particularly described in Paragraphs 4(b)(2) and 6(c).

e. The construction period described in Paragraph 6(d) shall be extended for a period of time equal to delay for any of the causes set forth in Paragraph 15 hereof or as a result of any pending or threatened administrative proceedings or litigation which, in Redeveloper's opinion, will interfere with its ability to begin or to complete construction of the particular Improvements involved.

f. The time for commencement of construction as set forth in Paragraph 6(d) shall be extended for the period of any delay resulting from any dispute concerning the construction plans.

7. Period of Duration of Covenant on Use.

The covenant pertaining to the uses of the Leased Property set forth in Paragraph 10 hereof shall remain in effect until December 31, 2008, and at that time such covenant shall terminate.

8. Commencement and Completion of Construction of Improvements. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the First Redevelopment Parcel, or any part thereof, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of each Lot which is a part of the Redevelopment Area and is subject to this Lease, through the construction of the Improvements thereon, and that such construction shall in any event be begun within the period specified in Paragraph 6 hereof, as applicable to such Lot and shall be completed within the period specified in such Paragraph 6, as so applicable. It is agreed that these agreements and covenants shall be covenants running with the land and that they are, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Master Agreement itself, to the fullest extent permitted by law and equity, binding for the benefit of the community and the Town and enforceable by the Town against the Redeveloper and its successors and assigns to or of the Redevelopment Area or any part thereof or any interest therein.

9. Certificate of Completion.

a. Promptly after completion of any Improvement on any portion of the First Redevelopment Parcel, in accordance with those provisions of this Lease and of the Master Agreement relating solely to the obligations of the Redeveloper to construct such Improvement (including the dates for beginning and completion thereof), the Town will furnish the Redeveloper with an appropriate instrument so certifying. Such certification by the Town shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in the Master Agreement and in this Lease with respect to the obligations of the Redeveloper, and its successors and assigns, to construct such Improvement and the dates for the beginning and completion thereof.

b. Each certification provided for in this Paragraph 9 shall be in the form of Exhibit 3, annexed hereto and incorporated herein by this reference, and will be recorded in the office of the County Clerk for recording of deeds and other instruments pertaining to the Redevelopment Area. If the Town shall refuse or fail to provide any certification in accordance with the provisions of this Paragraph 9, the Town shall, within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the particular Improvement involved in accordance with the provisions of this Lease and the Master Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Town for the Redeveloper to take or perform in order to obtain such certification.

c. If Redeveloper abandons the construction of any Improvement on any Leased Property previously undertaken by Redeveloper pursuant to this Lease, or if Redeveloper fails to complete the construction of any Improvement to be constructed hereunder in compliance with all applicable requirements of the Master Agreement and of the Lease, then the Town shall have the right, but not the obligation, to complete the construction thereof, without prejudice to any other right which the Town otherwise possesses under the Master Agreement and under this Lease as a consequence of such default; provided,however, that if the Redeveloper was determined to have failed to complete construction of that Improvement in compliance with this Lease and the Master Agreement for a specific reason or reasons stated by the Town to be the grounds for withholding a Certificate of Completion, as more particularly provided in the foregoing Paragraph 9.b., then the Town shall not be deemed to have properly completed construction of that Improvement unless the Town does so in full compliance with all applicable provisions of the Master Agreement and of this Lease, and in a manner which completely satisfies

the Town's prior reasons for not furnishing the Redeveloper with the appropriate Certificate of Completion in accordance with the other provisions of this Paragraph 9.

d. Any dispute arising under this Paragraph 9 may be submitted by either party to arbitration to be held in the Town of Kearny in accordance with the then prevailing Construction Industry Arbitration Rules of the American Arbitration Association.

10. Restrictions Upon Use of Property.

a. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to or in the First Redevelopment Parcel, or any part thereof, that the Redeveloper, and such successors and assigns, shall:

(1) Devote the First Redevelopment Parcel to, and only to and in accordance with, the uses specified in the Redevelopment Plan;

(2) Not discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease or rental, or in the use or occupancy of, the First Redevelopment Parcel or any Improvement erected or to be erected thereon, or any part thereof;

(3) In the sale, lease, or occupancy of the First Redevelopment Parcel, or any part thereof, not effect or execute any agreement, lease, conveyance, or other instrument, whereby the First Redevelopment Parcel, or any part thereof, is restricted upon the basis of race, color, creed, religion, ancestry, national origin, sex or marital status; and

(4) Comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, sex or marital status.

b. It is intended and agreed that the agreements and covenants provided in Subparagraph a. of this Paragraph 10 are covenants running with the land and that they are, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable

by, the Town and any successor in interest to the First Redevelopment Parcel, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest to the First Redevelopment Parcel, or any part thereof or any interest therein, and any party in possession or occupancy of the First Redevelopment Parcel or any part thereof. It is further intended and agreed that the agreement and covenant provided in Subparagraph a.(1) of this Paragraph 10 shall remain in effect for the period of time, or until the date, specified or referred to in Paragraph 7 hereof (at which time such agreement and covenant shall terminate) and that the agreements and covenants provided in Subparagraphs a.(2), (3) and (4) of this Paragraph 10 shall remain in effect without limitation as to time: Provided, that such agreements and covenants shall be binding on the Redeveloper itself, each successor in interest to the First Redevelopment Parcel, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the First Redevelopment Parcel or part thereof. The terms "uses specified in the Redevelopment Plan" and "land use" referring to provisions of the Redevelopment Plan, or similar language, in this Lease shall include the land use and all building and other requirements or restrictions of the Redevelopment Plan pertaining to such land.

c. In amplification of, and not in restriction of, the provisions of this Paragraph 10, it is intended and agreed that the Town and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Subparagraph a. of this Paragraph 10 both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Town, for the entire period during which such agreements and covenants

shall be in force and effect, without regard to whether the Town has at any time been, remains, or is, an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Town shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiary of such agreement or covenant may be entitled.

11. Prohibitions Against Assignment and Transfer; Permitted Assignments and Transfers; Permitted Assignees and Transferees.

a. Because of the importance of the redevelopment of the Redevelopment Area to the general welfare of the community and the public aids that have been made available by law for the purpose of making such redevelopment possible, the Redeveloper represents and agrees that this Lease and each other undertaking of Redeveloper pursuant to this Lease and the Master Agreement are, and will be used, for the purpose of redevelopment of the First Redevelopment Parcel and not for speculation in land holding.

b. The Redeveloper further represents and agrees for itself, and its successors and assigns, that:

(1) Except only

(A) by way of security for, and only for (i) the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the First Redevelopment Parcel, or any part thereof, to perform its obligations under this Lease with respect to making the Improvements (including Land Improvements), or (ii) any other purpose authorized by this Lease or the Master Agreement, or

(B) as to any individual part of the First Redevelopment Parcel as to which the Improvements to be constructed thereon have been completed, and which, by the terms of this Lease, the Redeveloper is authorized to convey or lease as such Improvements are completed, or

(C) as to any individual part of the First Redevelopment Parcel (i) as to which the Improvements proposed to be constructed or completed thereon are to be built or completed by a redeveloper having a "substantial identity of interest" with Mimi (that is, at least fifty-one (51%) percent of such redeveloper is owned beneficially, whether outright, in trust, or otherwise, by some or all of the persons who own Mimi), and (ii) which, by the terms of this Lease, the Redeveloper is authorized to convey or lease in order to effectuate the completion of such Improvements in accordance with this Lease,

The Redeveloper (except as so authorized) has not made or created, and will not, prior to the proper completion of the Improvements, as certified by the Town, make or create, or suffer to be made or created, any total or partial lease, assignment, conveyance, or sublease, or any trust or power, or transfer, in any other mode or form, of or with respect to, the Master Agreement, or this Lease, or the First Redevelopment Parcel, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Town; provided, however, that:

(D) prior to the issuance by the Town of the certificate provided for in Paragraph 9 hereof as to completion of construction of the Improvements, the Redeveloper may enter into an agreement to sublease, lease, assign, or otherwise transfer, the First Redevelopment Parcel, or any part thereof, or interest therein, provided, further, that such disposition may itself be made:

(i) at any time after such transfer agreement is entered into, if the transferee is a redeveloper with whom Mimi has a "substantial identity of interest" (as described above); or

(ii) only after issuance by the Town of the certificate provided for in Paragraph 9 hereof as to completion of construction of the Improvements, if the transferee is any person other than a person described in the foregoing sub-paragraph (i), provided, finally, that, in this latter case, the applicable transfer agreement shall provide that no payment of or on account of the purchase price or rent (other than a deposit) for the First Redevelopment Parcel, or the part thereof or the interest therein to be so transferred, may be made, prior to the issuance of such certificate;

(E) after the issuance by the Town of the certificate provided for in Paragraph 9 hereof as to completion of construction of the Improvements, the Redeveloper may

enter into an agreement to sublease, lease, assign, or otherwise transfer, the portion of the First Redevelopment Parcel covered by such certificate, or any subdivision thereof, or interest therein, to any person, and such disposition may itself be made at any time after such transfer agreement is entered into.

(2) The Town shall be entitled to require, except as otherwise provided in this Lease or in the Master Agreement, as conditions to any such approval, that:

(A) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Town, necessary and adequate to fulfill the obligations undertaken with respect to the First Redevelopment Parcel pursuant to the Master Agreement and in this Lease by the Redeveloper (or, if the transfer is of or relates to part of the First Redevelopment Parcel, such obligations to the extent that they relate to such part), provided, however, that, for this purpose, it is hereby agreed that a redeveloper with whom M_mi has a "substantial identity of interest" (as described) shall be deemed to satisfy the requirements of this provision.

(B) Any proposed transferee, by instrument in writing satisfactory to the Town and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Town, have expressly assumed all of the obligations of the Redeveloper under this Lease and the Master Agreement and shall have agreed to be subject to all of the conditions and restrictions to which the Redeveloper is subject (or, if the transfer is of or relates to part of the First Redevelopment Parcel, such obligations, conditions, and restrictions to the extent that they relate to such part).

(C) There shall be submitted to the Town for review all instruments and other legal documents involved in effecting the transfer; and, if approved by the Town, its approval shall be indicated to the Redeveloper in writing.

(D) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper (and Mimi, as appropriate) of the First Redevelopment Parcel (or allocable to the part thereof or interest therein transferred) and of any Improvements (including, for this purpose, any Land Improvements made pursuant to Paragarph 6b) thereon or allocable thereto; it being the intent of this provision to preclude assignment of this Lease or the Master Agreement or any transfer of any part of the First Redevelopment Parcel for profit prior to the completion of the Improvements thereon and to provide that if any assignment or transfer is made (and is not cancelled), the Town shall be entitled to increase the rental therefor to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this Paragraph 11b.(2)(D), and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the Town.

(E) The Redeveloper and its transferee shall comply with such other conditions as the Town may find desirable in order to achieve and safeguard the purposes of the Redevelopment Plan.

12. Mortgage Financing: Rights of Mortgagee (Including Right to Cure Default or Breach by Redeveloper).

a. (1) Prior to the completion of any Improvement, as certified by the Town, neither the Redeveloper nor any successor in interest to the Lot to which such Improvement is related or any part thereof or interest therein (the "Leased

Property") shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien thereon, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or to attach to that Leased Property, except for the purpose of obtaining

(A) funds only to the extent necessary for making the particular Improvement (including related Land Improvements), and

(B) such additional funds, if any, in an amount not to exceed the rental to be paid by the Redeveloper to the Town prior to completion of construction of such Improvement.

(2) The Redeveloper (or successor in interest) shall notify the Town in advance in writing of any financing secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Leased Property or any part thereof, and in any event it shall promptly notify the Town of any encumbrance or lien that has been created on or attached to the Leased Property, whether by voluntary act of the Redeveloper or otherwise.

(3) For the purposes of such mortgage financing as may be made pursuant to this Lease, the Leased Property may, at the option of the Redeveloper (or successor in interest), be divided into several parts or parcels, provided that such subdivision, in the opinion of the Town, is not inconsistent with the purposes of the Redevelopment Plan and this Lease and is approved in writing by the Town and by the Kearny Planning Board.

(4) Anything contained herein to the contrary notwithstanding, in order to meet the terms, conditions and provisions required to secure any mortgage loan providing for the advancing of funds either for temporary or construction financing or for permanent financing with respect to the First Redevelopment Parcel (or a Lot), or the related Improvement(s) (including related Land Improvement(s)), or both, which constitute

a particular Project (or any Unit thereof) (a "Mortgage Loan"), Redeveloper and the Town further agree, for the benefit and protection of the holder of a Mortgage Loan, provided that Redeveloper has given the Town notice of such Mortgage Loan, that:

(A) Redeveloper will keep, observe and perform each and every provision of this Lease and do every other act and all things required by law to keep and continue this Lease in full force and effect for the full period provided for herein except as may otherwise be agreed to by the holder of the Mortgage Loan;

(B) The Town and Redeveloper will make no agreement expressly, impliedly or by conduct serving to modify, alter, add to, terminate, or delete, any provision of this Lease, and will exercise no option or right hereunder unless Redeveloper has previously obtained and furnished to the Town the written consent of the holder of the Mortgage Loan;

(C) If there is any default by the Redeveloper hereunder, and if such default has not been waived by the Town and has not been cured (or, if appropriate, the curing of such default has not commenced) by Redeveloper (or Mimi, or the Permitted Assignee involved in such default, as the case may be) after due notice thereof, within the period therefor stated in this Lease, the Town agrees that, before taking any step which it may then be entitled to take, it will at that time first notify the holder of the Mortgage Loan thereof and then provide a reasonable opportunity to cure the same in light of the nature of the default and the available means to correct it, but in any event shall allow not less than thirty (30) days from the date of such notice to the Mortgagee of such default, and, if and to the extent that the Mortgagee cures any such default, or causes the same to be cured, Mortgagee shall be subrogated to the rights of the Town hereunder and under the Master Agreement, and shall have the right, but

not the duty, to attorn to the position of the Redeveloper hereunder and under the Master Agreement, and under the applicable Financial Agreement, as more particularly set forth elsewhere in this Paragraph 12;

(D) All the terms and provisions of the Redevelopment Projects Mortgage Loan Act of 1967 (N.J.S.A. 55:17-1 to 55:17-11) shall be made a part of and included herein with like effect as though recited at length;

(E) No waiver, election, acquiescence, estoppel or consent on the part of or against either party hereto shall affect or be binding upon the holder of the Mortgage Loan unless the Redeveloper has obtained and furnished to the Town the prior written consent of the holder of the Mortgage Loan; and

(F) Nothing in this Lease shall be construed in any way which would adversely affect the right of the Town to receive the contractual payments and other substantive rights to which it may be entitled under this Lease, it being the primary intention hereof that all of the terms, conditions and provisions hereof shall be and remain in full force and effect for the benefit and protection of the holder of the Mortgage Loan, notwithstanding any default or breach by the Redeveloper, its successors or assigns, so long as the Town receives, whether from the Redeveloper or from its lawful transferee or the holder of the Mortgage Loan, its subsidiary, nominee or assignee, the performance to be provided to it.

b. Notwithstanding any provision of this Lease, including but not limited to those which are or are intended to be covenants running with the land, the holder of any Mortgage Loan authorized by this Lease (including any such holder who obtains title to the Leased Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (1) any other party who thereafter obtains title to the Leased Property or such part from or through such holder or (2) any other purchaser at foreclosure sale other than the holder of the Mortgage Loan itself) shall in no wise be

obligated by the provisions of this Lease to construct or to complete the particular Improvements related to such portion of the First Redevelopment Parcel or to guarantee such construction or completion; nor shall any covenant or any other provision in the Master Agreement be construed so to obligate such holder, provided, that nothing in this Paragraph or any other Paragraph or provision of this Lease or the Master Agreement shall be deemed or construed to permit or authorize any such holder to devote the Leased Property or any part thereof to any use, or to construct any improvements thereof, other than those uses or improvements provided or permitted in the Redevelopment Plan, this Lease, or the Master Agreement.

c. Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Lease, the Town shall at the same time forward a copy of such notice or demand to each holder of any Mortgage Loan authorized by this Lease at the last known address of such holder shown in the records of the Town, and also to Mimi, if Mimi is not then the Redeveloper; provided, however, that the forwarding to the mortgagee of a copy of a notice or demand to the Redeveloper, pursuant to this Paragraph 12c., shall not constitute the giving of the notice or demand required by Paragraph 12a.(4)(C).

d. (1) After any breach or default referred to in the foregoing Paragraph 12c., each holder shall (insofar as the rights of the Town are concerned) have the right, at its option, to cure or remedy such breach or default (to the extent that it relates to the part of the First Redevelopment Parcel covered by its Mortgage Loan) and to add the cost thereof to the Mortgage Loan.

(2) Notwithstanding anything to the contrary in the foregoing, if the breach or default is with respect to construction of the Improvements on such portion of the First Redevelopment Parcel, nothing contained in this Paragraph or

any other Paragraph of this Lease shall be deemed to permit or authorize or require such holder, either before or after foreclosure or action in lieu thereof, to undertake to continue the construction or completion of such Improvements (beyond the extent necessary to conserve or protect Improvements or construction already made) without first having expressly assumed the obligation to the Town to complete, in the manner provided in this Lease and in the Master Agreement, the Improvements on the First Redevelopment Parcel or the part thereof to which the lien or title of such holder relates; provided, however, that if such holder does so undertake to continue the construction or completion of such Improvements (beyond the extent necessary to conserve or protect Improvements or construction already made), then it shall have the right, but not the duty, to do so by transferring all of its rights hereunder and under the Master Agreement to an entity which is qualified under the provisions of the Urban Renewal Corporation and Associations Law of 1961, N.J.S. 40:55C-20, et seq., as amended and supplemented, and which owns no other project at the time of such transfer. If any holder of any Mortgage Loan so transfers its rights hereunder, the transferee entity shall be entitled to the full benefits of the tax abatement previously granted to the Redeveloper pursuant to the Fox-Lance Act with respect to the Leased Property, to the same extent that the Redeveloper would then have been if no default had occurred.

(3) Any such holder or any such transferee of any such holder who shall properly complete the Improvements relating to the First Redevelopment Parcel or applicable part thereof shall be entitled, upon written request made to the Town, to a certification or certifications by the Town to such effect in the manner provided in Paragraph 9 hereof and any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or revesting of title to the First Redevelopment Parcel that the Town shall have or be entitled to because of any failure of Mimi or the Redeveloper or any successor in interest to the

First Redevelopment Parcel, or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts of the First Redevelopment Parcel, or because of any other default in or breach of this Lease or the Master Agreement, by Himi, the Redeveloper, or such successor, shall not apply to the Lot or part of the First Redevelopment Parcel to which such certification relates.

(4) Any such holder or any such transferee of any such holder who shall cure or remedy any breach or default which is referred to in the foregoing Paragraph 12d(1) and which is not within the scope of the foregoing Paragraphs 12d(2) or (3) shall be entitled to the full benefits of the tax abatement previously granted to the Redeveloper pursuant to the Fox-Lance Act with respect to the Leased Property, to the same extent that the Redeveloper would then have been if no default had occurred.

e. The Town shall not be required to subordinate its interest in the First Redevelopment Parcel to that of any lender of any Mortgage Loan who provides financing to Redeveloper for Improvements (and/or Land Improvements) and/or facilities on all or any part of the First Redevelopment Parcel; however, if any such mortgagee requires an instrument of the type commonly known as a "Severance Lease", then the Town agrees to execute such instrument, which shall be in the form of the instrument annexed hereto as Exhibit 4 and is incorporated herein by this reference.

13. Remedies

A. Except as otherwise provided in this Lease, in the event of any default in or breach of this Lease, or any of its terms or conditions, by any party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, shall commence to cure the same within ninety (90) days after receipt of such notice. Subject to the provisions of Paragraph 12, if such action is not taken or is not diligently pursued, or if the default or breach shall not be cured or remedied within a reasonable time,

the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

b. Subject to the provisions of Paragraph 12, if, in violation of this Lease:

> (i) Mimi or the Redeveloper (or any successor in interest) assigns or attempts to assign this Lease or any rights therein or in the First Redevelopment Parcel or any part thereof; and
>
> (ii) if any default or failure referred to in sub-paragraph (i) of this Paragraph 13b. shall not be cured within ninety (90) days after the receipt by the Redeveloper and Mimi of written demand by the Town addressed to the Redeveloper (and, if appropriate, to Mimi, and/or to each Permitted Assingee involved in such default or failure),

then this Lease, and any rights of the Redeveloper, or of any Permitted Assignee, in this Lease, shall, at the option of the Town, be terminated by the Town, and neither the Redeveloper (or the Permitted Assignee) nor the Town shall have any further rights against or liability to the other under the Master Agreement or under this Lease with respect to the Leased Property involved in such default or failure, and such termination shall be deemed to be a termination of exemption from real property taxation as provided in the applicable Financial Agreement.

14. Revesting Possession in Town Upon Happening of Event Subsequent to Leasing to Redeveloper, and (i) Prior to Completion of the Related Improvement or (ii) After Completion of the Related Improvement.

a. If, subsequent to the leasing of the First Redevelopment Parcel to the Redeveloper and prior to the completion of the Improvement relating to such part of the Redevelopment Area, as certified by the Town:

> (1) the Redeveloper (or successor in interest) shall default in or violate its obligations with respect to the construction of such Improvements (including the nature

and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied, within three (3) months, (six (6) months, if the default is with respect to the date for completion of such Improvements) after written demand by the Town to do so; or

(2) the Redeveloper (or successor in interest) shall fail to pay real estate taxes or assessments on that Redevelopment Parcel or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Lease, or shall suffer any levy or attachments to be made, or any materialman's or mechanics' lien, or any other unauthorized encumbrance or lien, to attach and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged, or provision satisfactory to the Town made for such payment, removal, or discharge, within ninety (90) days after written demand by the Town to do so; or

(3) there is, in violation of this Lease, any transfer of the First Redevelopment Parcel or any part thereof, and such violation shall not be cured within ninety (90) days after written demand by the Town to the Redeveloper to do so;

then, subject to the provisions of Paragraph 12, the Town shall have the right to re-enter and to take possession of the First Redevelopment Parcel and to terminate (and revest in the Town) the estate conveyed by this Lease thereof to the Redeveloper, it being the intent of this provision, together with other provisions

of this Lease, that the leasing of the First Redevelopment Parcel to the Redeveloper shall be made upon a condition subsequent to the effect that if any default, failure, violation, or other action or inaction by the Redeveloper specified in subsection (1), (2) or (3) of this Paragraph 14a occurs, then the failure on the part of the Redeveloper to remedy, end, or abrogate, such default, failure, violation, or other action or inaction, within the period and in the manner stated in such sub-divisions, shall give the Town, at its sole option, the right to declare a termination in favor of the Town of all the rights and interests in and to the First Redevelopment Parcel conveyed by the Lease thereof to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and any assigns or successors in interest to and in the First Redevelopment Parcel, shall revert to the Town; provided, that such condition subsequent and any revesting of title as a result thereof in the Town:

(A) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any Mortgage Loan authorized by this Lease for the protection of the holder of such Mortgage Loan; and

(B) shall not apply to any individual Lot of the First Redevelopment Parcel (or, in the case of a Lot leased, the leashold interest) with respect to which the Improvement to be constructed has been completed in accordance with this Lease and for which a certificate of completion has been issued as provided in Paragraph 9.

b. (1) Upon the revesting in the Town of title to the First Redevelopment Parcel or any part thereof as provided in subsection (a) of this Paragraph 14, the Town shall, pursuant to its responsibilities under New Jersey law, use its best efforts to resell the First Redevelopment Parcel or such part thereof (or to re-lease the same pursuant to a lease and redevelopment agreement similar to the Lease under which the Redeveloper had defaulted) (in each case, subject to such mortgage liens and leashold interests as in subsection (a) set forth and provided) as soon and in such manner as the Town shall find feasible and consistent with the objectives of such law and of

the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Town) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the Town and in accordance with the uses specified for the First Redevelopment Parcel or such part thereof in the Redevelopment Plan.

(2) Upon such resale of the First Redevelopment Parcel or such part thereof, the proceeds thereof shall be applied:

(A) First, to reimburse the Town, for all costs and expenses incurred by the Town, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the First Redevelopment Parcel or such part thereof (but less any income derived by the Town from the First Redevelopment Parcel or such part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the First Redevelopment Parcel or such part thereof (or, if the First Redevelopment Parcel is exempt from taxation or assessment or such charges during the period of ownership thereof by the Town, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the Town assessing official) as would have been payable if the First Redevelopment Parcel were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the First Redevelopment Parcel or such part thereof at the time of revesting title thereto in the Town or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the First Redevelopment Parcel or such part thereof; and any amounts otherwise owing the Town by the Redeveloper and any successor or transferee; and

(B) Second, to reimburse Mimi and the Redeveloper, as their interests shall appear, any any respective successor or transferee, up to an amount equal to the amount, if

any, by which (i) the sum of the cash actually invested by Mimi and/or the Redeveloper in making any Improvement on (or Land Improvement with respect to) the First Redevelopment Parcel (or allocable to the part thereof revested in the Town) or directly from the First Redevelopment Parcel (or allocable to the part thereof revested in the Town). Any balance remaining after such reimbursements shall be retained by the Town as its property.

(3) Upon such re-leasing of the First Redevelopment Parcel or of such part thereof, the proceeds thereof shall be used and applied as set forth in Paragraph 14.c.(8).

c. (1) If, subsequent to the leasing of the First Redevelopment Parcel to the Redeveloper and subsequent to the completion of the Improvements relating to any part of the First Redevelopment Parcel, as certified by the Town:

(A) the Redeveloper does not pay the rent due when and as required to do so pursuant to the terms of this Lease, and such default or failure is not cured within ninety (90) days after written demand by the Town to the Redeveloper; or

(B) the Redeveloper is in default in the performance of any obligation imposed on Redeveloper by this Lease, and Redeveloper has not diligently commenced to cure such default or failure within ninety (90) days after written demand by the Town to the Redeveloper,

then subject to the provisions of Paragraph 12, this Lease and any rights of the Redeveloper, or of any Permitted Assignee, in this Lease, shall, at the option of the Town, be terminated by the Town, without further notice to the Redeveloper, and the estate conveyed by this Lease shall thereupon be re-vested in the Town.

(2) If the Town so elects, but not otherwise, this Lease shall not terminate, although all rights of Redeveloper to the possession of the Leased Property shall be terminated.

(3) Upon the termination of the Redeveloper's right to possession of the Leased Property, regardless of whether this Lease shall also then be terminated, the Redeveloper shall surrender possession of the Leased Property immediately, and shall be deemed to have granted to the Town, and the Town shall thereupon have, subject to the provisions of Paragraph 12, full and free license to re-enter into and on the Leased Property or any part thereof with or without process of law and to expel and to remove Redeveloper or any other person or entity who may be occupying the Leased Property or such part thereof as a successor to Redeveloper; provided, however, that if Redeveloper, as landlord, shall have entered into a sublease with another person or entity, as tenant, and if such tenant shall not then be in default under the provisions of its lease. then the Town shall succeed to the rights and obligations of Redeveloper as Landlord under that lease, and the rights of the tenant thereunder shall remain undisturbed, so long as such tenant thereupon and thereafter complies with the terms of its lease, treating the Town or its designated successor as landlord.

(4) The Town may use such force in connection with a permitted re-entry and the removal of Redeveloper and of any other person who may then be removed pursuant to the terms of this Paragraph 14c, as may reasonably be necessary for that purpose, subject, however, to the provisions of Paragraph 12.

(5) Any permitted re-entry by the Town shall be made without waiving or postponing any other right which the Town may then have against Redeveloper.

(6) Any permitted re-entry shall be made without prejudice to any right or remedy conferred by statute or common law that might otherwise be used by the Town in connection

with recovering arrears in rent or in seeking compensation for breach of any term or condition of this Lease.

(7) No permitted re-entry, repossession, expulsion, or removal,whether by direct action of the Town or through legal proceedings instituted for that purpose, shall in and of itself terminate this Lease, or release Redeveloper from any liability for the payment of any rent then required to be paid by this Lease.

(8) (A) Notwithstanding anything to the contrary in the foregoing provisions of this Paragraph 14c, if the Town does re-enter the Leased Property, and does remove the Redeveloper, as hereinbefore permitted, whether or not this Lease is then completely or partially terminated, the Town must then use its best efforts to minimize any cost, expense or loss attendant on or resulting from such action by it, including, without limitation, leasing or reletting the Leased Property to one or more tenants satisfactory to the Town for the best rent, terms and conditions that the Town may then obtain. The acceptance of any tenant or the making of any lease by the Town shall be conclusive evidence of the making of all determinations necessary to an effective approval thereof by the Town.

(B) If any such permitted re-entry and reletting occurs, the Town shall thereupon and thereafter use and apply any rent received by the Town as the successor to the Redeveloper as follows:

(i) Payment of the costs of maintenance and operation of the Leased Property, including debt service and including reasonable compensation to the Town and its agents, attorneys or employees, for services rendered in connection with the management of the Leased Property;

(ii) Payment of all Impositions and other charges or expenses agreed to be paid by Redeveloper with respect to the Leased Property under the terms of this lease;

(iii) If, at the time of re-entry by the Town, Redeveloper was then in default with respect to the payment of rent, then, until the amount of such defaulted rent is repaid in full, together with interest thereon at the rate of six (6%) percent per annum, computed from the time it became due, payment thereof shall be made from this source.

(C) Notwithstanding anything to the contrary in the foregoing subparagraphs of this Paragraph 14c(8): (i) the remedies provided by this Paragraph 14c(8) are not exclusive, and the Town may, at its option, pursue the remedy of sale provided by Paragraph 14a, to the extent appropriate, and, in that event, the proceeds of such sale shall be approved as set forth in Paragraph 14b(2); and (ii) the Town shall not be under any obligation to repossess the Leased Property or any part thereof or to remove the Redeveloper therefrom or to terminate wither the Redeveloper's right to possession thereof or the term of this Lease, during any period in which the Redeveloper is in default under this Lease, and the foregoing provisions regarding the re-entry and repossession of the Leased Property, or any part thereof, by the Town, the management of the Leased Property so repossessed by the Town, and the disposition of the rents received by the Town, are intended to operate only if the Town shall elect to repossess the Leased Property, or such part thereof, in accordance with the terms of this Lease.

15. Enforced Delay in Performance for Causes Beyond Control of Party. For the purpose of any provision of this Lease, neither the Town nor the Redeveloper (or Mimi), as the case may be, nor any successor in interest, shall be considered in breach of, or default in, any of its obligations with respect to the preparation of the First Redevelopment Parcel for redevelopment, or the beginning or completion of any Improvement (or Land Improvement) referable thereto, or progress with respect thereto, in the event of enforced delay in the performance of such obligation due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy,

acts or omissions (including unreasonable delay in acting with respect to any application for approval of any aspect of the construction or completion of any Unit) of the Federal Government or of the HHDC or of any other governmental body or agency having jurisdiction with respect to any aspect thereof, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight delays, severe energy shortages, embargoes, and unusually severe weather, or delays of subcontractors due to any such cause, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Town with respect to the preparation of the First Redevelopment Parcel for redevelopment or of the Redeveloper or Mimi with respect to construction of the Improvements (or Land Improvements) related thereto, as the case may be, shall be extended for the period of the enforced delay as determined by the Town; provided, that the party seeking the benefit of the provisions of this Paragraph 15 shall, within sixty (60) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and have requested an extension for the period of the enforced delay.

16. Rights and Remedies Cumulative; No Waiver.

The rights and remedies of the parties to this Lease whether provided by law or by this Lease, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance, or manner or time thereof, of any obligation of any other party or of any condition to its own obligation under this Lease, shall be considered a waiver of any right of the party making the waiver with respect to the particular obligation of any other party, or of any condition to its own obligation, beyond those expressly waived in writing and to the extent thereof, or a

waiver in any respect in regard to any other right of the party making the waiver or any other obligation of any other party.

17. Provisions of Master Agreement Not Merged With This Lease.

No provision of the Master Agreement is intended to or shall be merged by reason of this Lease transferring possession of the First Redevelopment Parcel from the Town to the Redeveloper, and this Lease shall not be deemed to affect or impair any provision or covenant of the Master Agreement.

18. Obligations of Redeveloper and Mimi Under This Lease.

The Lessee/Redeveloper hereunder shall be initially and primarily responsible for the prompt performance and complete discharge of the obligations imposed on it by this Lease, and shall be initially and primarily responsible for curing any default or breach on its part hereunder; however, Mimi may discharge or perform any such obligation, or cure, or commence to cure, any such breach or default, in whole or in part, and, to the extent Mimi does so, it may seek reimbursement from the Lessee/Redeveloper, and shall be subrogated to the rights of the Town against the Lessee/Redeveloper.

19. Certain Liabilities Non-Recourse.

Neither the Redeveloper nor any of its partners, limited or general, shall be personally liable for the payment of the Annual Service Charge (as described and defined in the Financial Agreement) or for the payment of any tax or assessment which may be levied or assessed against any Lot or Improvement now or hereafter constituting all or a portion of the First Project.

20. Compliance with Applicable Law.

a. Redeveloper shall, at its expense, promptly comply or cause compliance with all laws, ordinances and regulations of governmental units whether or not same shall presently be within the contemplation of the parties hereto.

b. Redeveloper reserves the right to contest any such laws, ordinances, orders, rules, regulations or requirements by appropriate legal proceedings and the Town agrees to support any such application or appeal provided same is consistent with the Redevelopment Plan which is the subject of the Master Agreement; provided, however, that the provisions of this Paragraph 20 shall not be deemed to compel the Town to join in or to initiate any such legal proceedings.

21. Indemnity.

a. Redeveloper covenants and agrees, at its sole cost and expense, to indemnify and save harmless the Town against and from any and all loss, cost, expense or liability from claims by third parties, including, without being limited thereto, reasonable attorneys' fees and court costs, arising from or in connection with:

(1) the conduct or management of, or from, any work or thing whatsoever done by or on behalf of Redeveloper in or on the First Redevelopment Parcel during the term of this Lease, other than any work or thing done by or at the instance of the Town or any of its servants or employees;

(2) any breach or default on the part of Redeveloper in the performance of any covenant or agreement on the part of Redeveloper to be performed pursuant to the terms of this Lease;

(3) any act or negligence of Redeveloper, or any of its agents, contractors, servants, employees, or licensees, with respect to the First Redevelopment Parcel;

(4) any accident, injury or damage whatsoever caused by Redeveloper to any person, firm or corporation occurring during the term of this Lease, in or on the First Redevelopment Parcel, other than those caused by the Town's negligence.

b. If any action or proceeding is brought against the Town by reason of any claim covered by the foregoing indemnity, Redeveloper, upon notice from the Town, agrees to resist or defend such action or proceeding by counsel reasonably satisfactory to

the Town; for this purpose, counsel for Mimi's insurance carrier shall be deemed satisfactory.

c. Redeveloper agrees to pay, and to indemnify the Town against, all legal costs and charges, including counsel fees, lawfully and reasonably incurred in obtaining possession of such part of the First Redevelopment Parcel as is then leased to Redeveloper, after default of Redeveloper, or upon expiration or earlier termination of the Term of this Lease, or in enforcing any covenant or agreement of Redeveloper herein contained.

22. Insurance.

a. During the term of this Lease, Redeveloper shall, at its own cost and expense, as long as Redeveloper is the Lessee hereunder, provide and keep in force the following insurance:

(1) Comprehensive public liability insurance for the mutual benefit of the Town and Redeveloper, against claims for bodily injury, death or property damage occurring in or about the First Redevelopment Parcel and the related Improvements (including, without limitation, bodily injury, death or property damage resulting directly or indirectly from or in connection with any change, alteration, improvement, or repair thereof), with limits of not less than $3,000,000 for bodily injury or death to any one person and $5,000,000 for bodily injury or death to any number of persons, and property damage with limits of not less than $250,000. Such insurance may be carried under a so-called "blanket policy" procured by Mimi and covering all Redevelopment Parcels, and each Redevelopment Parcel shall be added to the premises covered by such insurance, as soon as the Lease thereof is entered into, as more particularly set forth in Paragraph 22 of the Master Agreement.

(2) Insurance covering the First Redevelopment Parcel against loss or damage by fire and lightning and such risks as are customarily included in extended coverage endorsements attached to fire insurance policies covering property

similar to such premises (including windstorm, hail, explosion, riot, riot attending a strike and civil commotion, damage from aircraft and vehicle, vandalism and malicious mischief, sprinkler leakage, sonic boom and smoke damage) in an amount equal to 90% of the full replacement value thereof (excluding foundations and excavation costs) or such higher amount as either may be required by the holder of any fee mortgage covering the premises or is necessary to prevent the Town and/or Redeveloper from becoming a co-insurer.

b. Except as provided in Paragraph 22d, all insurance to be provided and kept in force by Redeveloper under the provisions hereof shall name as the insured the Town and Redeveloper, as their respective interests may appear; provided, however, that the insurance carried pursuant to Paragraph 22(a)(2) shall be carried in favor of the Town and the holder of any fee mortgage on the subject Redevelopment Parcel, and the standard mortgagee clause shall be attached to the appropriate policies. Insurance carried pursuant to Paragraph 22(a)(2) shall provide that the loss, if any, shall be adjusted with and payable to the party who will perform the work of restoration and such mortgagee, as their interests may appear.

c. Unless otherwise agreed by the parties hereto, all policies shall be obtained by Mimi and certificates thereof shall be delivered to the Town at or before the Commencement Date of the term of this Lease of the First Redevelopment Parcel and shall be taken in responsible companies; where appropriate, certificates of inclusion in a "blanket" policy shall suffice. All policies shall be for periods of not less than one year and shall contain a provision whereby the same cannot be cancelled unless the Town is given at least 10 days' prior written notice of such cancellation. Mimi shall procure all necessary renewals of such insurance from time to time and Mimi shall promptly deliver to the Town certificates thereof at least 30 days before the expiration thereof.

d. If and when Mimi is not the Lessee under this Lease, these insurance obligations shall be the primary responsibility of such Lessee; however, this obligation of Lessee may be discharged by Mimi providing the requisite insurance coverage in the manner provided in Paragraph 22 of the Master Agreement. If Mimi does so, such insurance shall name as the insured the Town, Mimi and the Lessee/Redeveloper hereunder, as their respective interests may appear, and the Lessee/Redeveloper hereunder shall pay to Mimi,when Mimi requests it, such Lessee/Redeveloper's pro rata share of the cost of such insurance, as determined by Mimi.

23. Surrender of Leased Premises.

a. Redeveloper shall and will, on the last day of the term of this Lease of the First Redevelopment Parcel, or upon any earlier termination of this Lease, pursuant to the provisions hereof, well and truly surrender and deliver up the First Redevelopment Parcel into the possession and use of the Town without fraud or delay, and in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings and occupancies other than subleases then terminable at the option of the Landlord thereof upon notice of no more than one (1) year or subleases executed during the term of this Lease to which the Town shall have specifically consented, and free and clear of all liens, mortgages and encumbrances, other than those, if any, existing on the date hereof or created by the Town or subsequent owners of the First Redevelopment Parcel or created by Redeveloper or Mimi in the course of redevelopment of the First Redevelopment Parcel and in accordance with the terms of this Lease or the Master Agreement, without any payment or allowance whatsoever by the Town on account of or for any buildings or Improvements erected or maintained on the First Redevelopment Parcel at the time of this surrender or for the contents thereof or appurtenances thereto, whether or not the same or any part thereof, or any additions, improvements, alterations, restorations, repairs or replacements of the same or any part thereof shall have been paid for or purchased by Redeveloper or Mimi and all such buildings, improvements,

additions, alterations, restorations, repairs and replacements shall become the sole and absolute property of the Town without any obligation by the Town to pay any compensation therefor, or by Redeveloper or Mimi to remove the same, except that in the event of sooner termination and if at that time the holder of any leasehold mortgage shall exercise any of its options herein to obtain a new lease for the remainder of the term of this Lease, then title thereto shall automatically pass to, vest in and belong to the lessee under the new lease until the expiration or sooner termination of such new lease. The foregoing shall apply to any holder of a leasehold mortgage on the First Redevelopment Parcel.

b. On the last day of the term of this Lease of the First Redevelopment Parcel, or upon any earlier termination of this Lease, subject to the right of any leasehold mortgagee to acquire title to any building or improvement as provided in Paragraph 23a, Redeveloper will, at the Town's request, and without charge, execute, acknowledge and deliver, and/or cause to be executed, acknowledged and delivered, to the Town, or the Town's designee, in proper form for recording, a good and sufficient deed and/or conveyance and/or bill of sale or such other instrument as may be necessary, sufficient or adequate, to transfer and convey to the Town, or such designee, all the right, title and interest of Redeveloper, and, if Redeveloper is a Trustee, of any beneficial owner of Redeveloper's interest, in and to any buildings or Improvements, subject only to existing liens, mortgages or encumbrances as aforesaid. If Redeveloper shall fail to comply with the foregoing provisions, the Town, in addition to any other remedies available to it, in consequence thereof, may execute, acknowledge and deliver the same as the attorney-in-fact of Redeveloper and such beneficial owners, if any, and in its and their name, place and stead, and Redeveloper hereby irrevocably makes, constitutes and appoints the Town, or such designee, as then appropriate, or such person's successors and assigns, Redeveloper's such attorney-in-fact for that purpose. The said Deed and/or conveyance and/or Bill of Sale or such other instrument as referred to hereinabove shall

shall be prepared and recorded at the expense of Redeveloper, and any sales, transfer, stamp or similar tax in connection therewith shall be borne equally by Redeveloper and the Town.

c. Except for loss or damage occasioned by the acts or negligence of the Town, or any of such entity's contractors, agents, servants or employees, the Town shall not be responsible to Redeveloper or Mimi for any loss or damage occurring to any property owned by Redeveloper or Mimi or any subtenant or invitee or licensee.

d. The provisions of this Paragraph 23 shall survive the termination of this Lease.

24. Condemnation.

a. If at any time during the term of this Lease, the Leased Property (including any Improvement thereon) shall be taken for any public or quasi-public purpose by any competent power or authority by the exercise of any right of eminent domain or in condemnation proceedings or by agreement between the Town, the Redeveloper, and those authorized to exercise such right:

(1) This Lease thereof and the Term hereof shall automatically cease and terminate, if all or materially all thereof was so taken, as of the date upon which title shall vest in such authority, and the rent therefor shall be apportioned and paid up to said date (for purposes hereof, the term "materially all" shall mean a taking of so much of such Leased Property (or Improvement, as the case may be) that what remains thereof is not reasonably useable for the purposes for which it was used immediately prior to such taking); and

(2) if less than all or materially all of the Leased Property subject to this Lease is so taken, then any Lot or Lots, title to which shall have vested in such authority, shall be deemed automatically eliminated from the status of Leased Property under this Lease, as of the date upon which title thereto shall vest in such authority, and

the rent payable under this Lease shall be adjusted pro rata for the remainder of its Term, and the Town shall, if requested by Redeveloper, execute and deliver an appropriate modification of this Lease confirming the elimination of such item or items from the status of Leased Property covered by this Lease, and confirming the pro rata adjustment of the rent hereunder.

b. If any such taking occurs, the Town and Redeveloper agree to cooperate in applying for and in prosecuting any claim for such taking, and agree that the aggregate net award, after deducting all expenses and costs, including attorneys' fees, incurred in connection therewith shall be paid jointly to Redeveloper and the Town (or, if required, to the holder of any Mortgage Loan placed on all or part of the Leased Property affected by such taking) and shall be distributed as follows:

(1) If such taking affects only a portion of an Improvement or the Lot on which it is located and such Lot is not eliminated from this Lease, the Town shall receive and keep an amount equal to the then fair market value of the Town's reversionary interest in the affected property, and Redeveloper shall receive and keep the entire net award paid. In such event, Redeveloper at its own cost and expense (whether or not the net award shall be sufficient or any Mortgage Loan placed on such Lot shall permit the net award to be used for repair and restoration) shall diligently repair and restore any remaining portion of such Improvement to a complete architectural unit.

(2) If such taking affects all or materially all of (A) the Leased Property, as provided in Paragraph 24a.(1), or (B) an Improvement or the Lot on which it is constructed, as provided in Paragraph 24a.(2), then the Town shall promptly refund to Redeveloper (or Mimi, as the case may be) any prepaid rent attributable to such Leased Property which was paid by such party, and the net award shall be paid as follows:

(i) First there shall be paid, out of the net award, to the holder of any Mortgage Loan then a lien against the Leased Property, or the Improvement, or the Lot (as the case may be) so affected by such taking, the unpaid principal balance of such Mortgage Loan.

(ii) The balance of the net award (herinafter called the "Fund") remaining after such payment to the holder of such Mortgage Loan shall be divided between the Town and Mimi as follows:

(A) Mimi (and/or Redeveloper, as their interests shall appear) shall be paid (in the aggregate) an amount out of the Fund equal to "Lessee's Share" as defined in Paragraph 24(b)(2)(ii)(C) and the Town shall be paid an amount out of the Fund equal to "Lessor's Share" as defined in Paragraph 24(b)(2)(ii)(D); provided, however, that if the balance of the Fund, after distribution to Lessee of Lessee's Share, would be less than Lessor's Share, then Lessor shall be paid, and shall be entitled to receive, only an amount equal to the balance of the fund remaining after such payment to Lessee. If Lessor fails to promptly refund to Lessee any prepaid rent as provided above, then, in addition to all other remedies available to Lessee, the amount of such prepaid rent not so refunded shall be paid to Lessee out of Lessor's Share.

(B) Any balance of the Fund, after payment to Lessee of Lessee's Share and to Lessor of Lessor's Share, shall be divided between Lessor and Lessee (which, for this purpose, shall mean Mimi and/or Redeveloper, as their interests shall appear) as follows: 75% thereof to Lessee and 25% thereof to Lessor.

(C) The Term "Lessee's Share" as used above shall mean an amount equal to the sum of: (1) the greater of (A) the then fair market value of all buildings and other Improvements on or referable to the land taken (including Land Improvements) or (B) the Redeveloper's and Mimi's combined total cost and expense of every kind and nature incurred and paid in connection with and for the construction, repair and replacement, if any, of all buildings or other Improvements (including Land Improvements) on or referable to the land taken, less the amount of the net award paid to the holder of any Mortgage Loan pursuant to Paragraph 24(b)(2)(i), and, for this purpose, the certification by Lessee's independent certified public accountant of said total costs and expenses shall be conclusive between the parties for purposes of this Paragraph (provided, however, that, if Lessee shall at the time of such taking be unable to certify and establish such total costs and expenses, or shall elect not to attempt to certify or establish the same, such total costs and expenses shall be deemed to be an amount equal to the original cost basis of such buildings and improvements used by Lessee for income tax depreciation purposes, increased by the increase, if any, in such cost basis of such buildings and improvements used by Lessee for income tax depreciation purposes, increased by the increase, if any, in such cost basis from time to time resulting from repairs and replacements to such buildings and improvements); and (2) the then fair market value of Lessee's interest under the Lease of the Leased Property taken.

(D) The term "Lessor's Share" as used above shall mean an amount determined by multiplying (1) the then fair market value of the land taken

per acre, by (2) the number of acres so taken.

c. If any governmental action does not result in the taking or condemnation of any portion of the Leased Property but creates a right of compensation therefor, such as, without limitation (except as provided in Paragraph 24d), the changing of the grade of any street on the Leased Property or upon which the Leased Property abuts, this Lease shall continue in full force and effect, without reduction or abatement of rent, and the rights of Lessor and Lessee shall be unaffected by the other provisions of this Paragraph, and shall be governed by applicable law. The holder of any Mortgage Loan shall be entitled to any award paid therefor, and, if there be no such Mortgage Loan, the same shall be paid to Lessee.

d. If the temporary use of the whole or any part of the Leased Property shall be taken at any time during the term of this Lease or of any renewal hereof for any public or quasi-public purpose of any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement between Lessee and those authorized to exercise such right, Lessee shall give prompt notice thereof to Lessor and the term of this Lease and of any renewal thereof shall not be reduced or affected in any way and Lessee shall continue to pay in full the net rent and other sum or sums of money and charges reserved and provided to be paid by Lessee, but Lessee shall be entitled to, and shall, receive the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the sovereign shall extend beyond the termination of this Lease, and of any renewals hereof, in which case the award made for such taking shall be apportioned between Lessor and Lessee as of the date of such termination. In any proceeding for any such taking or condemnation, Lessor shall have the right to intervene and to participate in such proceedings; provided, however, that if such intervention shall not be permissible or permitted by the court, Lessee shall, at Lessee's expense, consult with Lessor, its attorneys and experts, and

make all reasonable efforts to cooperate with Lessor in the prosecution or defense of such proceedings. At the termination of any such use or occupation of the Leased Property by the sovereign, Lessee will, at its sole cost and expense, repair and restore the buildings and Improvements then upon the Leased Property to the condition, as nearly as may reasonably be possible, in which the same were at the time of such taking, but Lessee shall not be required to make such repairs and restoration if the term of this Lease shall expire prior to, or within one year after, the date of termination of the temporary use so taken, and in such event Lessor shall be entitled to claim, sue for and recover from the sovereign all damages and awards therefor arising out of the failure of the sovereign so to repair and restore the building at the expiration of such temporary taking. Any recovery or sum received by Lessee as an award or compensation for physical damage to the premises caused by and during the temporary taking shall be deemed a trust fund to be used first for the purpose of repairing or restoring such damage.

25. Maintenance and Repair; Damage or Destruction of Improvements.

a. In full discharge of Redeveloper's duty to maintain and repair the Leased Property (and related Improvement) under this Lease, Redeveloper shall, as Landlord, enter into one or more lease agreements with tenants which will impose on the Redeveloper's tenant the duty to maintain the property subject to such lease agreement, by including therein a provision substantially the same as that annexed to this Agreement as Exhibit 5, which is incorporated herein by this reference.

b. Similarly, in full discharge of Redeveloper's duty under this Lease to restore any destroyed property, Redeveloper shall, as landlord, impose on each of its tenants the duty to restore destroyed property by including in each lease agreement entered into by Redeveloper, as landlord, a provision substantially the same as that annexed hereto as Exhibit 6, which is incorporated herein by this reference. Notwithstanding anything

to the contrary in the foregoing: (i) Redeveloper shall be required to restore the destroyed Leased Property only if Redeveloper's tenant elects to continue its lease thereof; and (ii) if such property is leased to a series of tenants, Redeveloper shall be obligated to restore such property only if tenants constituting the lessees under leases yielding sixty-six and two-thirds (66-2/3%) per cent of the gross rentals derived from such destroyed property elect not to terminate their leases as the result of such destruction.

26. Effect of Bankruptcy, etc., of Redeveloper.

Redeveloper agrees that, if any proceedings under the Bankruptcy Act or any amendment thereto shall be commenced by or against it, and, if against Redeveloper, such proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement, or plan of the reorganization, or if Redeveloper is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which Redeveloper is a party, with authority to take possession or control of the demised premises or the business conducted thereon by Redeveloper, and such receiver is not discharged within a period of sixty (60) days after his appointment, any such event or any such involuntary assignment shall be deemed to constitute a breach of this Lease by Redeveloper and shall, at the election of Town, but not otherwise, and without notice or entry or other action of Town, terminate this Lease, and also all rights of Redeveloper hereunder, and also all rights of any and all persons claiming under Redeveloper.

27. Notices and Demands.

Any notice, demand or other communication under this Lease by any party to any other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested, or delivered personally and: in the case of Mimi, addressed to its Chief Executive

Officer, in the case of Redeveloper, addressed to its General Partner, and, in either such case, with a copy to Mimi's Corporate Counsel, David A. Biederman, Esq., each of the foregoing having an address for this purpose at 590 Belleville Turnpike, Kearny, New Jersey 07032; in the case of the Town, addressed to the Mayor of Kearny, with a copy to the Town Attorney, each of the foregoing having an address for this purpose at Town Hall, Kearny, New Jersey; or to any such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the others as provided in this Paragraph.

28. Captions.

Any caption of any portion of this Lease is inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

29. Short Form Lease.

The parties to this Lease will, at any time, at the request of any other, execute duplicate originals of an instrument in recordable form which will constitute a short form of lease, setting forth a description of the demised premises subject to this Lease, the Term of this Lease, and any other portions hereof (except the rent provisions) that any party may request, or as the applicable recording law may require.

30. Reasonable Consent.

If the consent or approval of any party hereto is required, or if any act, thing or performance is to be to the satisfaction of any party, pursuant to any provision of this Lease, such consent or approval shall not be unreasonably withheld or delayed and such satisfaction shall be deemed to be the reasonable satisfaction of the party to be satisfied. In the event of failure to respond to any request for consent or approval for a period of twenty (20) business days after receipt of such request is made in accordance with the provisions

of this Lease, such failure shall conclusively constitute the granting of such consent or approval.

31. References.

All references made and pronouns used herein shall be construed in the singular and plural, and in such gender as the sense and circumstances require.

32. Severability.

If any provision of this Lease shall be declared invalid or illegal for any reason whatsoever, then, notwithstanding such invalidity or illegality, the remaining terms and provisions of the within Lease shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

33. Interpretation Under Laws of the State of New Jersey.

a. This Lease shall be governed by and construed in accordance with the internal laws of the State of New Jersey.

b. The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of the Town and Mimi and Redeveloper, and their respective heirs, personal representatives, successors and assigns.

34. Arbitration.

a. Notwithstanding anything to the contrary herein, this Lease shall be subject to arbitration only insofar as is expressly stated in Paragraph 9b hereof, and no arbitrator shall have the power or authority to amend, alter, or modify, any part of this Lease, in any way, nor shall any other provision of this Lease be subject to arbitration, to any extent.

b. Either party may at any time bring an action in the Superior Court of the State of New Jersey for the construction or enforcement of any provision of this Lease.

35. Entire Agreement.

This Lease constitutes the entire agreement between the parties with regard to the transactions contemplated hereby and

cannot be changed or terminated orally, but only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

36. Counterparts.

This Lease is executed in counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Town of Kearny, New Jersey has caused this Lease to be duly executed on behalf of the Town by the Mayor, and its seal to be hereunto duly affixed and attested by the Town Clerk of the Town of Kearny, New Jersey, and Mimi Developement Corp., acting on behalf of Mimi Redevelopment Associates I, a limited partnership in formation, has caused this Lease to be duly executed by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

By: David C. Rowlands
DAVID C. ROWLANDS, Mayor

JAMES CANTLON, Town Clerk

MIMI DEVELOPMENT CORP.,
acting on behalf of MIMI
REDEVELOPMENT ASSOCIATES I,
a Limited Partnership in formation

By: Dolores Turco
DOLORES TURCO, President

ATTEST:

MIMI TURCO, Secretary

Bk 3283 Pg 793

STATE OF NEW JERSEY)
) ss.
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this ~~31st~~ 8th day of ~~July~~ August, 1979, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared JAMES CANTLON who, being by me duly sworn, did depose and make proof to my satisfaction that he is the Town Clerk of the Town of Kearny, the Town named in the within Instrument; that he well knows the corporate seal of said Town of Kearny, the Town named in the foregoing Instrument; that the seal thereto affixed is the proper corporate seal of said Town of Kearny; that the same was so affixed thereto and the said Instrument signed and delivered by DAVID C. ROWLANDS, who was, at the date and execution thereof, the Mayor of the Town of Kearny, in the presence of said deponent, as the voluntary act and deed of said Town; and that the deponent thereupon signed the same as subscribing witness.

James Cantlon

Sworn to and subscribed
before me this 8th day
of August, 1979.

David A. Biederman
DAVID A. BIEDERMAN

STATE OF NEW JERSEY)
) ss.
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this ~~11~~ 8th day of ~~July~~ August 1979, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared MIMI TUFCO who, being by me duly sworn, did depose and make proof to my satisfaction that she is the Secretary of MIMI DEVELOPMENT CORPORATION, the corporation named in the within instrument; that DOLORES TUFCO is the President of said corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of directors of said corporation; and that the seal affixed to said Instrument is such corporate seal and was thereto affixed and said Instrument was signed and delivered by said President, as and for her voluntary act and deed and as and for the voluntary act and deed of said corporation, acting on behalf of MIMI Redevelopment Associates 1, a Limited Partnership in formation, in the presence of deponent, who thereupon subscribed his name thereto as witness.

Mimi Tufco

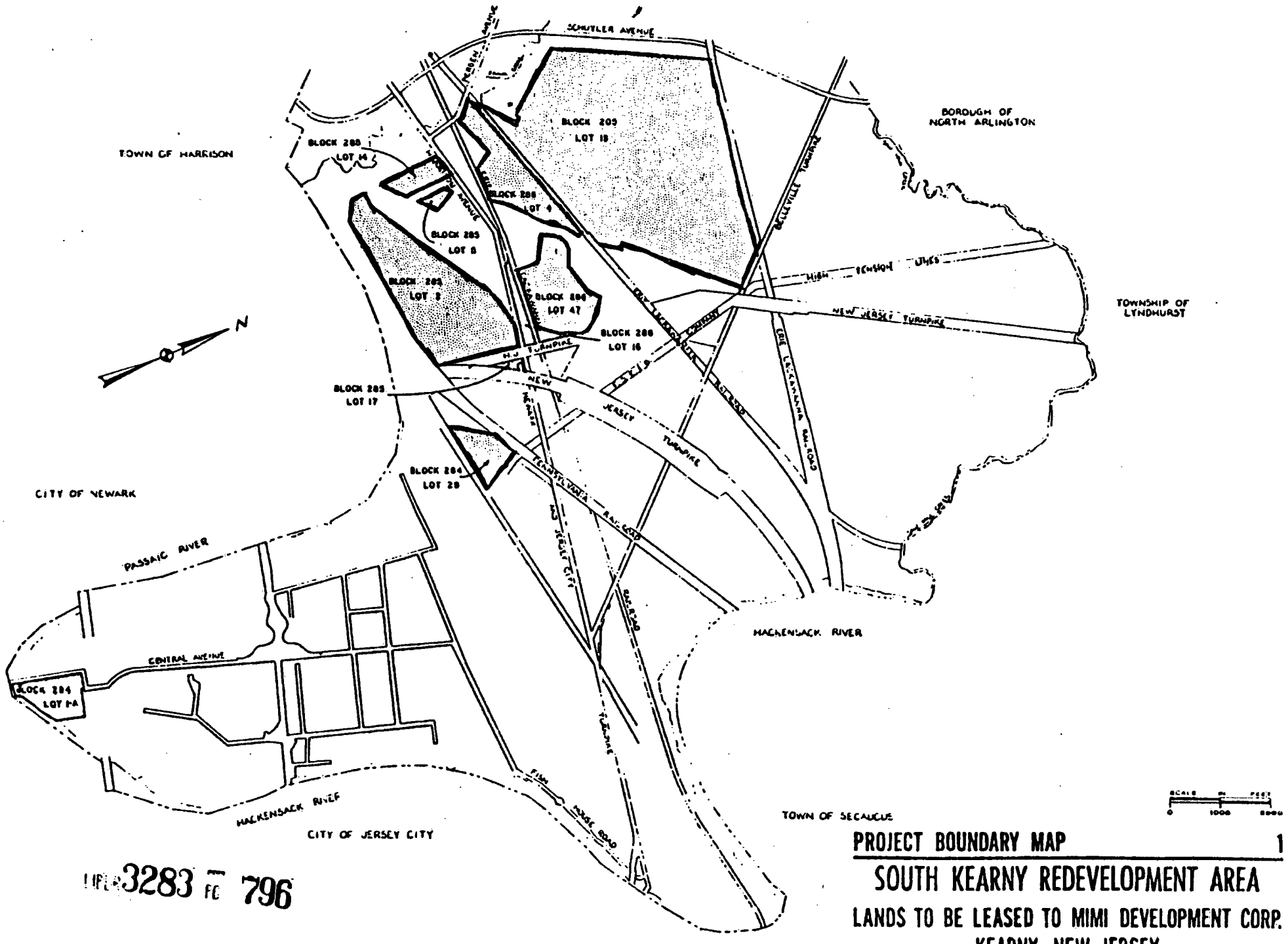
Sworn to and subscribed
before me this 8th day
of August, 1979.

David A. Biederman

David A. Biederman

3283 795

SCH KB 1



LIBER 3283 PG 796

PROJECT BOUNDARY MAP 1

SOUTH KEARNY REDEVELOPMENT AREA

LANDS TO BE LEASED TO MIMI DEVELOPMENT CORP.
KEARNY, NEW JERSEY

PLANNING CONSULTANT: CANDEUB, FLEISSIG AND ASSOCIATES JUNE, 1970

Lawyers Title Insurance Corporation

A STOCK COMPANY

Home Office – Richmond, Virginia

SCHEDULE B-[redacted]

Exceptions

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

2. Rights of parties in possession, if any, other than owner.

3. Terms and conditions of proposed lease agreement between The Town of Kearny, a municipal corporation of New Jersey and Mimi Development Corp., a corporation of New Jersey.

4. Such state of facts as may be revealed by an accurate survey and inspection of the subject lands and premises.

5. Rights of adjoining owners in all watercourses crossing or abutting the subject lands.

6. Easements and utility grants: See Schedule B-2-7 attached hereto and made a part hereof.

7. Servitude to the public in and to so much of the subject lands as lie within the documented right of way of any public street, road, highway, lane. alley or way abutting or crossing the subject lands.

8. Lien of all unpaid taxes, sewer rents, water rents and other municipal charges up to and including the full year of 1979.

9. Lien of imposed by any ordinance for future assessments for improvement of the Town of Kearny.

10. Possible additional taxes assessed or levied under R. S. 54:4-63.1 et seq.

11. Terms and conditions as set forth in Deed Book 2610, page 414.

12. Terms and conditions and effect of instruments set forth in Deed Books 2620, page 328; 2622, page 369; 3007, page 8; 3007, page 13; 3017, page 817; and 3219, page 6; location to be determined by survey.

13. Direct access to the New Jersey Turnpike will not be guaranteed; the same being a limited highway.

14. Access will not be guaranteed to the Twelfth Tract.

NOTE: If policy is to be issued in support of a mortgage loan, attention is directed to the fact that the Company can assume no liability under its policy, the closing instructions, or Insured Closing Service for compliance with the requirements of any consumer credit protection or truth in lending law in connection with said mortgage loan.

LIBER 3283 Pg 79

EXTRA COPY

Lawyers Title Insurance Corporation

A Stock Company

Home Office - Richmond, Virginia

SCHEDULE -B-2- cont'd.

15. Slope and drainage rights in and to that portion of the subject lands which abut the right of way of the Penn-Central Railroad or its successors .

16. Slope and drainage rights as to all portions of the subject land which abut the New Jersey Turnpike.

17. Slope and drainage rights as to all portions of the subject lands which abut the Erie Lackawanna Railroad right of way.

18. Rights of adjoining owners in and to Frank Creek and all other water courses which cross or abut the subject lands.

19. Proof is required as to the exact location of Lot 15-D, Block 292 which was conveyed by the Town of Kearny by Deed Book 2243, page 201. Said lands were part of Lots 15-A-15-D as set forth in Deed Book 2008, page 231. This exception relates to the Fifth Tract.

20. Access will not be guaranteed to the Fifth Tract.

21. Access will be guaranteed to the Eighth Tract.

22. The high water mark lines of the Passaic and Hackensack Rivers will not be guaranteed.

23. Policy to issue will not insure any portion of the subject lands which lie waterward of the high water mark lines of the Passaic and Hackensack Rivers .

24. Paramount rights of the United States of America to fix a line, from time to time, for the readjustment of the bulkhead or pierhead line at any point below the high water mark lines without compensation.

25. Rights of the Department of Conservation and Development to supervise plans for any building erected or done on any waterfront and to abate as a public nuisance any improvements thereon commenced or completed since April 8, 1914 without approval of the New Jersey Harbor Commision, or said Department of Conservation and Development under authority given by P.L. of N.J. of 1914, page 205, Section 4, its amendments and supplements.

26, Possible outstanding reparian rights and/or fee title interest of the State of New Jersey in and to any portion of the subject lands which may be claimed and/or determined to be tidelands, lands heretofore flowed by tides.

27. Regulation and control of the Hackensack Meadowlands Development Commission and the Hackensack Miadowlands Municipal Commitee under P.L. 1968, Chapter 404, Senate Bill No. 477, approved January 13, 1969, entitled "Hackensack Meadowland Reclemation and Development Act".

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SCHEDULE ~~B-2-XXXX~~ 7

Easement Schedule

a) Easement for City of Boyonne water pipeline in Deed Book 645, page 347, affects Seventh, Twelfth, Sixth and Fifth Tracts.

b) Reservation of driveway easement in Deed Book 887, page 348, affects First Tract.

c) Easement for telephone and telegraph lines as set forth in Deed Books 1028, page 397 and 1211, page 161, affects First and Seventh Tracts.

d) Pipeline easements as set forth in Deed Books 2390 page 154; 2767 page 577 and 2415 page 394, affects the Sixth Tract.

e) Easements to Texas Eastern Transmission Corp. as set forth in Deed Books 2469 page 76; 2531 page 236 and 2528 page 509, affects Sixth Tract.

f) Right of way easement set forth in Deed Book 2732, page 522, affects Tenth Tract.

g) Right of way easement set forth in Deed Book 2847, page 126, affects Fourth Tract.

h) Sewer easement to the Town of Kearny as delineated on the Tax Map, affects Eleventh Tract.

i) Unrecorded water line easement servicing the City of Bayonne located along the southerly side line of Bellville Turnpike and which is recited in various deeds of record, affects First Tract.

j) Rights of way set forth in Deed Book 2610, page 414, affects Third Tra

k) Slope and drainage rights to the State of New Jersey as set forth in Deed Book 2024, page 185, affects First Tract.

SOUTH KEARNY REDEVELOPMENT AREA
KEARNY, NEW JERSEY

EXHIBIT I

REDEVELOPMENT PLAN FOR LANDS TO BE LEASED TO MIMI DEVELOPMENT CORP.

Submitted to:

THE KEARNY REDEVELOPMENT AGENCY

Prepared for:

MIMI DEVELOPMENT CORP.
KEARNY, NEW JERSEY

Prepared by:

CANDEUB, FLEISSIG AND ASSOCIATES
NEWARK, NEW JERSEY

June, 1979

SOUTH KEARNY REDEVELOPMENT AREA
KEARNY, NEW JERSEY

June, 1979

REDEVELOPMENT PLAN

A. TABLE OF CONTENTS

B. DESCRIPTION OF PROJECT

1. Boundaries of Redevelopment Project

The South Kearny Redevelopment Area is located in the City of Kearny, County of Hudson, State of New Jersey and is bounded as shown on Map 1, Project Boundary Map and as described in Exhibit A.

2. Redevelopment Plan Objectives

The basic goal for this area is to develop a significant portion of the presently unimproved and vacant portion of the South Kearny area into functional and aesthetically pleasing complexes which will contain business and industrial activities. Specifically, renewal activities for the Redevelopment Area will be undertaken to conform with and meet the following objectives:

a. The development of viable industrial areas to aid industrial expansion of local industry.

b. The development of new employment centers to improve the economic activity of the redevelopment area and to create additional job opportunities.

c. The improvement of the Town's tax base by developing previously under-utilized areas.

3. Type of Redevelopment Action

Proposed redevelopment action in the project area shall include:

a. Installation and construction of streets, public utilities and services and site improvements essential to the preparation of sites for uses in accordance with the Redevelopment Plan.

b. The lease or otherwise transfer of real property or any interest herein acquired for redevelopment in accordance with the land use provisions and other controls of this Redevelopment Plan.

C. LAND USE PLAN

1. Land Use and Zoning

Permitted land uses are located on the Zoning Maps, maps 2 and 3, showing existing and proposed Town zoning requirements respectively.

2. Land Use Provisions and Building Requirements

In order to achieve the objectives of the Redevelopment Plan, the redevelopment and use of the land within the project area will be made subject to the regulation and controls specified in this Section C.2. In the event of a conflict between the Redevelopment Plan and zoning or other town ordinance, the more restrictive control will govern.

a. Uses to Be Permitted

The permitted uses shall be:

1) Industrial

- Any production, processing, manufacture, fabrication, cleaning, servicing, testing, repair or storage of goods, materials or products, and business offices accessory thereto, but not including the storage of flammable or explosive materials as a principal use.

- Establishments for scientific research and development, and business offices accessory thereto, where the manufacturing, fabrication, production, repair, storage, sale and resale of materials, goods and products is incidental and accessory to the principal use of scientific research and development.

- Business or commercial establishments which provide supplies and/or services primarily to industrial and manufacturing customers, employees and business offices accessory thereto.

- Automobile service stations

- Automobile and truck leasing and sales, exclusive of semi-trailers.

- Boat sales, rental and repair.

- Warehouses, wholesale establishments, and other storage facilities.

- Light public utility uses.

2) Accessory Uses

- Hotels and motels.

- Professional offices.

- Banking and saving and loan facilities.

- Public and private parking facilities.

b. Additional Regulations to be Imposed on Real Property to be Acquired for Redevelopment

1) Design Objectives

In order to develop a functionally and visually appealing environment in the South Kearny Redevelopment Area, Design Objectives, attached hereto as Exhibit B, shall guide development in the area.

2) Setback and Building Regulations

Setback and building regulations for areas to be acquired for redevelopment shall be as specified in Table I, attached hereto.

D. PROCEDURE FOR MODIFICATION OF APPROVED PLAN

1. This Redevelopment Plan may be modified at any time, provided that if modified after the lease of real property in the South Kearny Redevelopment Area, the modification may be conditioned upon such approval of the owner, lessee or successor in interest as the Mayor and Council of the Town of Kearny may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or his successor or successors in interest, may be entitled to assert. Where the proposed modification will substantially change the Redevelopment Plan, the modification shall be formally approved by the Mayor and Council of the Town of Kearny as in the case of an original plan.

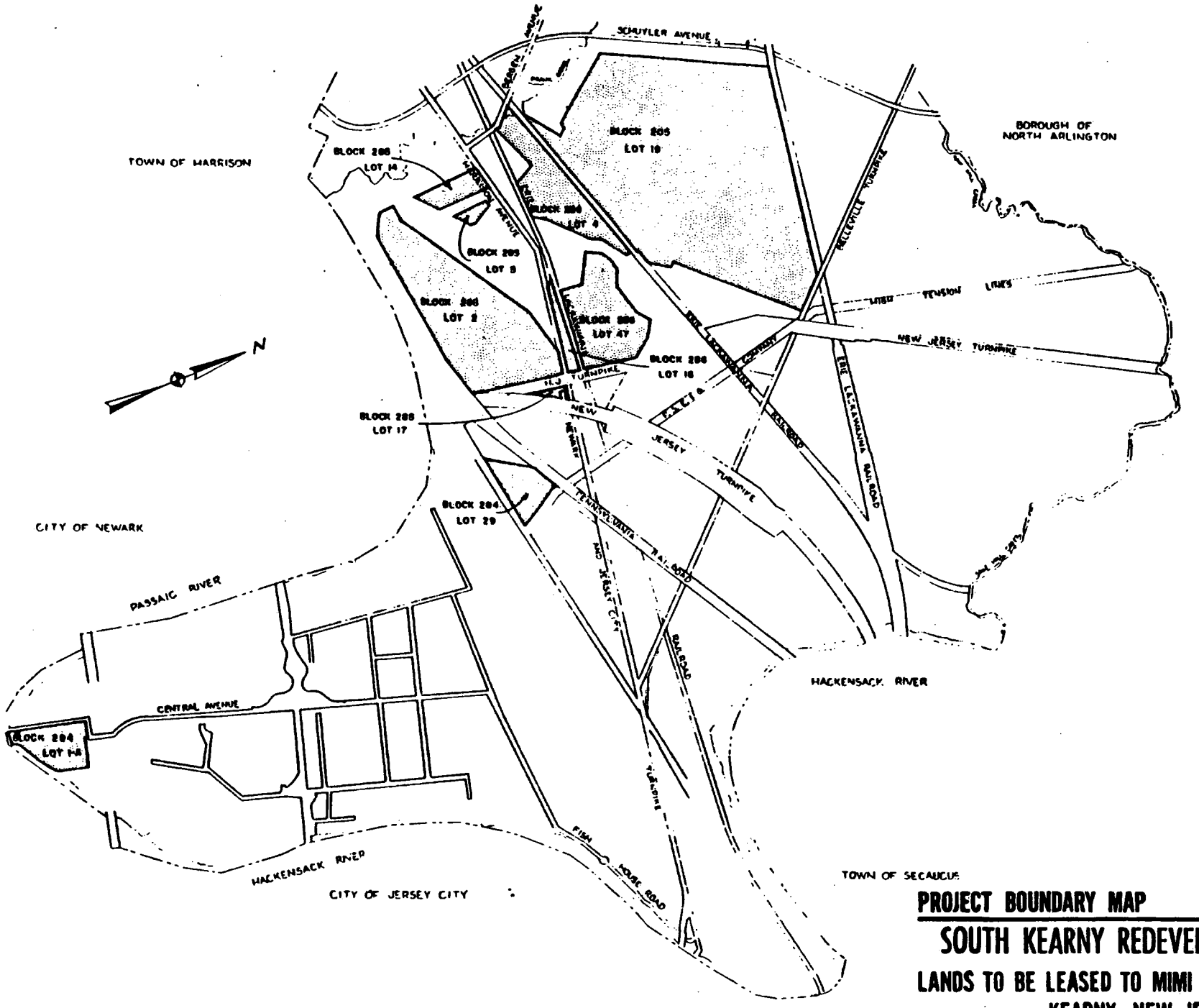
2. Upon the approval by the Mayor and Council of the Town of Kearny of a redevelopment plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective redevelopment area and the Mayor and Council of the Town of Kearny may then cause such plan or modification to be carried out in accordance with its terms.

Table I

BUILDING AND YARD REQUIREMENTS

Use	Zoning District	Minimum Area (S.F.)	Minimum Width (Ft.)	Minimum Front Yard (Ft.)	Minimum Side Yard/Aggregate (Ft.)	Minimum Rear Yard (Ft.)	Maximum Height (Ft.)	Maximum Height (Stories)	Improved Lot Coverage (%)	Lot Coverage (%)
Industrial	M	40,000	125	40	20/35	50	60	4	90	40
Industrial	SKM	60,000	150	40	20/35	50	80	6	100	50

Source: Proposed Zoning Ordinance prepared by Malcolm Kasler & Associates



LIBER 3283 PG 806

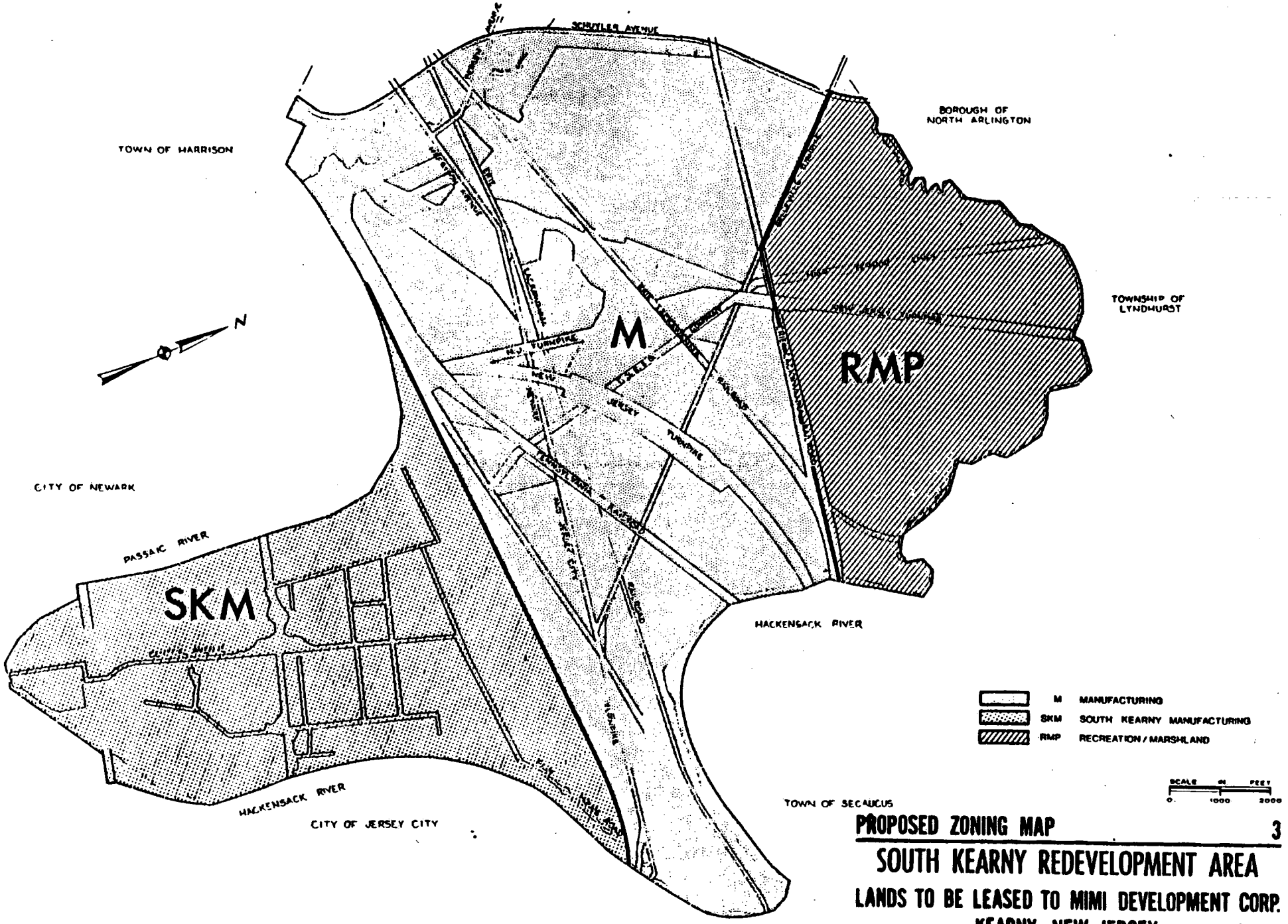
PROJECT BOUNDARY MAP 1

SOUTH KEARNY REDEVELOPMENT AREA

LANDS TO BE LEASED TO MIMI DEVELOPMENT CORP.

KEARNY, NEW JERSEY

PLANNING CONSULTANT: CANDEUB, FLEISSIG AND ASSOCIATES JUNE, 1979



LIBER 3283 PG 808

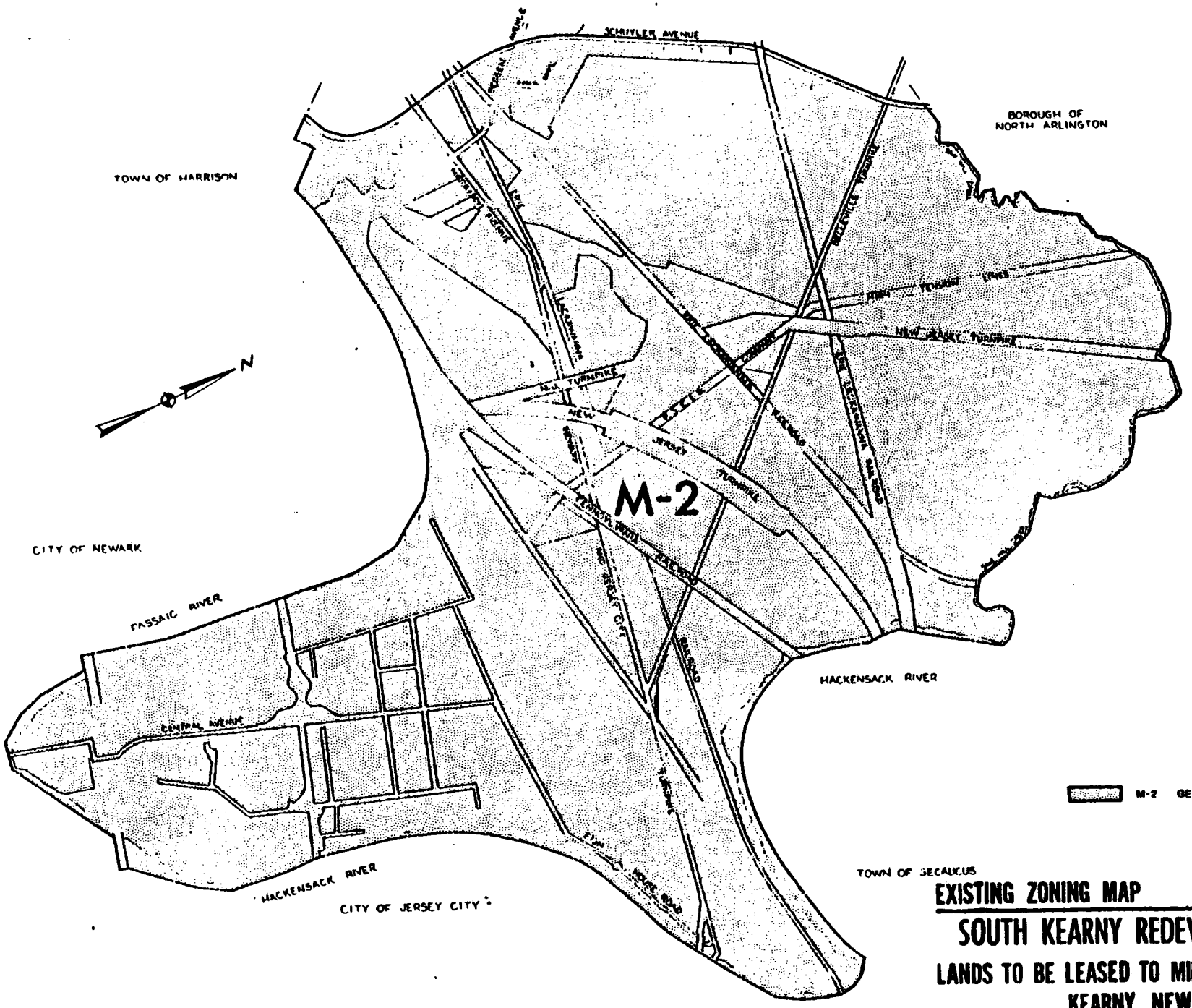
PROPOSED ZONING MAP 3

SOUTH KEARNY REDEVELOPMENT AREA

LANDS TO BE LEASED TO MIMI DEVELOPMENT CORP.
KEARNY, NEW JERSEY

PLANNING CONSULTANT: CANDEUB, FLEISSIG AND ASSOCIATES

JUNE, 1979



M-2 GENERAL INDUSTRIAL

SCALE IN FEET
0 1000 2000

EXISTING ZONING MAP 2

SOUTH KEARNY REDEVELOPMENT AREA

LANDS TO BE LEASED TO MIMI DEVELOPMENT CORP.
KEARNY, NEW JERSEY

PLANNING CONSULTANT: CANDEUB, FLEISSIG AND ASSOCIATES JUNE, 1979

LIBER 3283 FG 807

SOUTH KEARNY REDEVELOPMENT AREA
REDEVELOPMENT OF LANDS TO BE LEASED TO
MIMI DEVELOPMENT CORP.
KEARNY, NEW JERSEY

EXHIBIT A
LOT DESIGNATIONS

Located in the Town of Kearny, County of Hudson, State of New Jersey, and described on the Town tax roles and the tax maps as follows:

1437	Block 205	Lot 19
1434	Block 284	Lot 29
1433	Block 285	Lot 2
1434	Block 285	Lot 5
1432	Block 285	Lot 14
1431	Block 285	Lot 17
1437	Block 286	Lot 4
1437	Block 286	Lot 16
1437	Block 286	Lot 47
1431	Block 294	Lot 1a

Kearny, New Jersey 6/79

LIBER 3283 PG 809

These design objectives have been developed to serve as a guide in creating attractive and efficient environments at the various redevelopment parcels, and to establish guidelines to be followed in Design Review of specific redevelopment proposals by the Kearny Redevelopment Agency.

The various controls and checks are meant to stimulate the development of attractive and economically successful ventures by ensuring an environment with esthetic and use compatibility, pedestrian and vehicular circulation and easy and direct access to all structures and other elements of the plan.

General Objectives

The following objectives apply to the project area as a whole, and developer's proposals for each redevelopment parcel shall be in conformity with these objectives:

1. Site Plan Objectives

   a. Site planning of buildings for each reuse parcel shall conform to overall site planning considerations to achieve a cohesive and attractive project.

   b. Individual parcels shall be developed to reinforce and become integral parts of the planned development of the project as a whole.

   c. Development proposals for individual reuse parcels shall observe the overall traffic circulation plan. Vehicular access shall be designed to provide maximum safety and ease of circulation, and to eliminate conflict with traffic. Trucking and service access shall be combined and shared where possible.

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   a. Streets, pedestrian walks and open spaces shall be designed as integral parts of the overall site design for each parcel and surrounding areas where previously established and shall

be consistent with overall project site design objectives. They shall be properly related to adjacent existing and proposed buildings and be appropriately landscaped and adequately and attractively lighted.

b. Landscaped and paved pedestrian walks shall be provided along the lines of most intense use, particularly from building entrances to streets or entrance drives and from off-street parking areas to buildings.

c. The location and design of pedestrian walks shall provide for maximum safety and separation from vehicular traffic.

d. Materials of paving, lighting fixtures, retaining walls, fences, curbs, benches and other elements of the streetscape shall be durable and well designed, easily maintained, and indicative of their function.

e. Open spaces shall be located to provide maximum usability and to create a harmonious relationship of buildings and open spaces.

4. Off-Street Parking and Loading Objectives

a. Off-street parking and loading facilities shall be coordinated within the plan to minimize number of entrances and exits. Where possible, cooperative use of parking and loading facilities by adjacent buildings shall be arranged.

b. Pedestrian access from parking spaces to uses served by parking areas shall be direct and not in conflict with vehicular movements.

5. Landscape Design Objectives

a. A landscape design plan shall be developed for each parcel incorporating treatment of open space, pedestrian walks, drives, service areas, parking areas, grading and planting areas. It shall emphasize the relationship of these elements to the proposals for adjoining parcels and to the existing adjoining park and residential areas.

b. Existing trees shall be retained where possible and shall be integrated into the landscape design plan.

c. All open spaces and pedestrian walks shall be designed as integral parts of the overall site design, properly related to adjacent and proposed buildings and coordinated with the

proposals of the Redevelopment Plan for other parcels. Walks shall be designed for maximum safety, and, where appropriate, shall be clearly separated from vehicular traffic.

d. Material and design of paving, retaining walls, fences, curbs, benches and other design features shall be harmonious in appearance and easily maintained.

e. Landscape treatment shall consist of nondeciduous shrubs, ground cover, and street trees that are appropriate to the character of the project area. Hard-surfaced and paved areas including paths, plazas, and other points of maximum concentration of use shall be sensitively designed.

f. Landscape materials selected should be appropriate to the growing conditions of the Town's environment.

g. Parcels adjoining either the park or housing areas shall include a planted buffer strip which will act as a screen between the different uses.

6. Sign Design Objectives

a. All signs shall be harmonious complements to the overall project, appropriate in scale and appearance.

b. All signs shall be of a design compatible with the building to which they pertain. Lighting shall be restrained.

EXHIBIT 2

FINANCIAL AGREEMENT

THIS AGREEMENT (the "Financial Agreement") entered into as of the day of , 1979, by and between the TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the"Town") and MIMI REDEVELOPMENT ASSOCIATES I, a partnership having its principal office at 590 Belleville Turnpike, Kearny, New Jersey 07032 (the "Redeveloper"), which is qualified to do business under the provisions of the Urban Renewal Corporation and Associations Law of 1961 (N.J.S.A. 40:55C-20, et seq.), as amended and supplemented (the "Act"):

W I T N E S S E T H

WHEREAS, the Town has undertaken an urban renewal or redevelopment project within the Town of Kearny in furtherance of the objectives of Chapter 187 of the Public Laws of 1949 of the State of New Jersey, as amended and supplemented, in accordance with a redevelopment plan for the area of approximately 684.84 more or less acres lying within the municipal boundaries of the Town, which is more particularly described on the survey annexed hereto as Schedule A and incorporated herein by this reference (the "Redevelopment Area"), as shown on a plan designated "Kearny Meadowlands Redevelopment Area, Redevelopment Plan", a copy of which is annexed hereto as Exhibit 1 and is incorporated by this reference (the "Redevelopment Plan"); and

WHEREAS, the Plan contemplates, inter alia, the redevelopment by the Town of portions of the Redevelopment Area with buildings and improvements for industrial, commercial and business use and related offstreet parking; and

WHEREAS, the Town has entered into a Master Leasing and Option Agreement with MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi") dated

for the purpose of providing for the redevelopment of the Redevelopment Area (the "Master Agreement"); and

WHEREAS, under the Redevelopment Plan, an area within the Redevelopment Area, outlined in red on Schedule A hereto and bounded as described on Schedule B annexed hereto and incorporated herein by this reference (the "First Redevelopment Parcel") is designated for use as a major distribution center; and

WHEREAS, pursuant to the terms of the Master Agreement, Mimi has designated Redeveloper as its Permitted Assignee, as described therein, with respect to the redevelopment of the First Redevelopment Parcel; and

WHEREAS, pursuant to the Master Agreement, the Redeveloper entered into a lease with the Town (the "Lease") pursuant to which the Redeveloper has leased the First Redevelopment Parcel from the Town and has agreed to construct thereon Improvements consisting of a building complex containing at least 50,000 square feet, said Improvements together with said Redevelopment Parcel being referred to as the "First Project", and each such Improvement together with its Lot being referred to herein as a "Unit"; and

WHEREAS, in accordance with the Lease and in accordance with the Act, the Redeveloper has heretofore made written application to the Town for approval of the First Project; and

WHEREAS, the Town Council has heretofore by resolution adopted and approved the application, a copy of such application and a certified copy of such resolution of approval being attached hereto as Schedules "C" and "D" respectively; and

WHEREAS, the Town believes that the in lieu tax consideration to be given to each of the Improvements comprising part of the First Project pursuant to this Financial Agreement affords maximum redevelopment of the First Redevelopment Parcel and is, therefore, in the best interests of the Town and the health, safety, morals and welfare of its residents and is in accordance with the provisions of the Act and the public purposes pursuant to which the redevelopment of the Kearny Meadowlands Redevelopment Area has been undertaken and is being assisted in accordance with the applicable provisions of State law;

NOW, THEREFORE, it is mutually agreed as follows:

1. The Redeveloper represents that the application attached to this Financial Agreement as "Schedule C" and incorporated herein by this reference sets forth the manner in which the Redeveloper proposes to develop, manage and operate the First Project and each of the Units therein, the plans for financing the First Project, including, but not limited to, the estimated total First Project Cost, the interest and amortization rates on the total First Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amounts of projected permanent mortgage financing, and the proposed First Project rental schedules and lease terms as well as the projected "Annual Gross Revenue" (hereinafter defined) and net profit for the First Project. Redeveloper covenants and agrees to use its best efforts to conform in the development, construction and operation of the First Project to the matters and things set forth in said application, that is, the manner in which Redeveloper proposes to develop, manage and operate the First Project, and the plans for financing the First Project, it being understood, however, with particular respect to the First Project Cost (and the cost of each Unit thereof), interest rate, financing terms

and mortgage amortization, rental schedules and lease terms, that the same are projected and estimated and may be modified as particular circumstances may require, but that in all material respects it is the intent and agreement of the Redeveloper to comply as closely as shall be practicable with the information and representations set forth in said application.

2. Subject to the provisions of Paragraph 16, the Town hereby grants to the Redeveloper, but only to the extent hereinafter expressly set forth in Paragraph 3(a) hereof, exemption from real property taxation on the Improvements to be constructed on the First Redevelopment Parcel for a period of not more than twenty (20) years from the date of the execution of this Financial Agreement or for a period of not less than fifteen (15) years from the "date of first operation of the Unit" of the First Project (as hereinafter defined), whichever period ends first.

3. (a) (1) (A) The Redeveloper shall pay for each year for which tax exemption is claimed and granted, as an annual service charge in lieu of real property taxes on the Improvements for each Unit required to be constructed by the Lease, beginning on the date of first operation of that Unit, an amount equal to fifteen (15%) percent of the Annual Gross Revenue received by the Redeveloper from all Improvements in that Unit.

(B) Since the date of first operation of a Unit may not be the start of a calendar year, and the in lieu payments are due on a calendar year basis, the aforesaid annual service charge shall be adjusted on a pro rata basis with respect to any year in which the period after the date of first operation of a Unit is less than a full calendar year.

(b) As used in this Financial Agreement, the term "Annual Gross Revenue" shall include total annual gross rentals and other income received by Redeveloper from the First Project, but shall not include payments for insurance, utilities, assessments or any maintenance expenses (including maintenance expenses of common areas), made directly to Redeveloper or by a tenant for the tenant's own account pursuant to any occupancy lease, it being the intent of this provision to recognize that Redeveloper's

leases with its tenants will likely by "net" leases and that under such leases these amounts are ordinarily paid by the tenant.

(c) As used in this Financial Agreement, the term "date of first operation of the Units" is defined as the date on which actual occupancy of a portion of the building or Improvement by a tenant of said Unit first occurs.

4. Against the annual services charge as provided herein, the Redeveloper shall be entitled to a credit for the amount, without interest, of the real estate taxes on the land comprising the First Redevelopment Parcel paid by it in the last four (4) preceding quarterly installments.

5. The Redeveloper further covenants and agrees as follows:

(a) To limit its profits and dividends payable in accordance with the provisions of the Act.

(b) To pay the annual service charge as provided for in Paragraph 3 hereof, annually, within thirty (30) days after the close of each calendar year. In the event that such payment is not made, the Town may proceed to enforce the collection thereof in the same manner and with the same rights as are applicable to delinquent real estate taxes or in any other manner authorized by the Act.

(c) To submit annually, within ninety (90) days after the close of each of its fiscal years, its auditor's reports of income from and expenses related to the First Project, to the Mayor and governing body of the Town, which reports shall remain confidential except as otherwise provided by law.

(d) Upon request of the Town, to permit inspection of the property, equipment, buildings and other facilities of the Redeveloper, and to permit examination and audit of any of its books, contracts, records, documents and papers relating to this Agreement or the First Project, by duly authorized representatives of the Town, provided same are at reasonable hours on reasonable

notice and in the presence of designated representatives of Redeveloper.

(e) At all times prior to the expiration or other termination of this Financial Agreement, to remain bound by the provisions of the Act.

(f) Not to effect or execute any agreement, lease, conveyance, or other instrument, whereby the First Project, or any part thereof, is restricted upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease or occupancy thereof, nor to discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease, or rental, or in the use or occupancy, of the First Project or any Improvement erected or to be erected thereon, or any part thereof, and to comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, sex or marital status.

(g) During the period of tax exemption as provided herein, to be subject to limitation of profits payable by it pursuant to the provisions of N.J.S.A. 40:55C-66, and Redeveloper shall have the right to establish reserves against unpaid rentals, and reasonable contingencies, which shall include but shall not be limited to the cost of renovating portions of the Units from time to time for purposes of rerenting, and/or vacancies in an amount not exceeding ten (10%) per cent of the gross revenues of the Redeveloper from the First Project for the fiscal year preceding the date in which a determination is being made with respect to permitted "net profits" as provided in N.J.S.A. 40:55C-66. In computing "net profit" as provided in N.J.S.A. 40:55C-50, the Redeveloper shall deduct from gross revenues an annual amount sufficient to amortize the "total Project cost" and/or "total Unit cost", as defined in the Act, as the case may be, over the period of 25 years. For this purpose, in computing "total Project cost" or "total Unit cost", the rentals shall be capitalized at ten (10%) per cent.

(h) Within ninety (90) days after the end of its fiscal year, to pay to the Town any profits in excess of the profits permitted it under the provisions of the Act.

6. It is understood and agreed that, subject only to the provisions of Paragraphs 2 and 16, and in all other respects notwithstanding anything herein expressed or implied to the contrary, at the end of twenty (20) years from the date of the execution of this Financial Agreement, or at the end of fifteen (15) years from the date of first operation of a particular Unit of the First Project, as defined herein, whichever period ends first, the tax exemption upon that particular Unit of the First Project shall thereupon absolutely cease, and the Lot and Improvement comprising such Unit of the First Project shall thereupon be assessed and taxed according to general law as other property in the Town is assessed and taxed, and, at the date on which the tax exemption upon the entire First Project absolutely ceases, as described above, all restrictions and limitations herein contained as provided by law shall absolutely terminate and be at an end and the Redeveloper shall thereupon render its final account to the Town.

7. Before having received a Certificate of Completion in accordance with the terms and conditions of the Lease with the Town, the Redeveloper shall not voluntarily transfer the First Project, or any Unit thereof, to anyone other than a qualified urban renewal association or corporation, and any such transfer shall be subject to the condition that the transferee shall assume all of the Redeveloper's obligations under this Financial Agreement and to the further conditions that the transferee otherwise qualify under all other applicable requirements of law and that the Town specifically consent thereto. The Town hereby consents to Redeveloper's voluntary transfer of the First Project, or any Unit thereof, to another entity qualified under the Act owning no other Project at the time of transfer, as provided by N.J.S.A. 40:55C-60, at any time after Redeveloper has received a Certificate of Completion with respect to the First Project (or Unit, as the case may be) then being so transferred.

8. The Redeveloper may at any time after the expiration of one (1) year from the completion date of the entire First Project (which shall be the date of first operation of the last Unit) notify the Town that as of a certain date designated in said notice it relinquishes its tax exemption status. As of the date so set, the tax exemption, the service charges, the profit restrictions, and all other restrictions and limitations imposed by this Financial Agreement and by the Act shall terminate.

9. Upon any termination of such tax exemption, obligation and restrictions, whether by affirmative action of the Redeveloper as provided in Paragraph 8 above or by the provisions of the Act pursuant to this Financial Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Redeveloper, and within ninety (90) days after the date of such termination the Redeveloper shall pay to the Town a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40:55C-66, as well as the excess profit, if any, payable pursuant to N.J.S.A. 40:55C-66, and pursuant to Paragraph 5 of this Financial Agreement by reason of the treatment of such date as the end of the fiscal year.

10. Subject to the provisions of Paragraphs 11(c), 13b, and 13c, in the event of a default in or breach of this Financial Agreement by Redeveloper, if such default or breach is not cured within ninety (90) days after receipt by Redeveloper of written demand by the Town to do so, then the Town may terminate this Financial Agreement and such termination shall be deemed to be a termination of tax exemption as herein provided.

11. The Redeveloper shall give the Town written notice of any mortgage loan providing for the advancing of funds either for temporary or construction loans or for permanent financing in respect to the Land, Improvements, or both, for each Unit constituting the First Project ("mortgage Loan"), together with the name and address of the holder of such Mortgage Loan. Anything contained herein to the contrary notwithstanding, in order to meet the terms, conditions and provisions required to secure a Mortgage Loan to

finance the First Project or a Unit thereof, Redeveloper and the Town further agree, for the benefit and protection of the holder of a Mortgage Loan, provided the Redeveloper has given the Town notice of such Mortgage Loan, that:

(a) The Redeveloper will keep, observe and perform each and every provision of this agreement and so every other act and all things required by law to keep and continue this agreement in full force and effect for the full period provided for herein except as may otherwise be agreed to by the holder of the Mortgage Loan:

(b) The Town and the Redeveloper will make no agreement expressly, impliedly, or by conduct, serving to modify, alter, add to, terminate or delete, any provision of this Agreement and will exercise no option or right hereunder unless the Redeveloper has prior thereto obtained and furnished to the Town the written consent of the holder of the Mortage Loan:

(c) If there is any default by the Redeveloper hereunder, and if such default has not been waived by the Town and has not been cured (or, if appropriate, the curing of such default has not commenced) by Redeveloper (or the Permitted Assignee involved in such default, as the case may be) after due notice thereof, within the period therefor stated in this Financial Agreement, the Town agrees that before taking any step which it may then be entitled to take, it will at that time first notify the holder of the Mortgage Loan thereof and then provide a reasonable opportunity to cure the same in light of the nature of the default and the available means to correct it, but in any event shall allow not less than thirty (30) days from the date of such notice to the Mortgagee of such default, and, if and to the extent that the Mortgagee cures any default, or causes the same to be cured, the Mortgagee shall be subrogated to the rights of the Town hereunder and under the applicable Lease, and shall have the right, but not the duty, to attorn to the position of the Redeveloper hereunder and under the applicable Lease, as more particularly set forth in the Master Agreement and in Paragraphs 13b and c hereof;

(d) All the terms and provisions of the Redevelopment Projects Mortgage Loan Act of 1967 (N.J.S.A. 55:17-1 to 55:17-11) shall be made a part of and included herein with like effect as though recited at length;

(e) No waiver, election, acquiescence, and estoppel or consent on the part of or against either party hereto shall affect or be binding upon the holder of the Mortgage Loan unless the Redeveloper has obtained and furnished to the Town the prior written consent of the holder of the Mortgage Loan; and

(f) Nothing in this agreement shall be construed in any way as to adversely affect the right of the Town to receive the contractual payments and other substantive rights to which it may be entitled under

this agreement, it being the primary intention hereof that all of the terms, conditions and provisions hereof shall be and remain in full force and effect for the benefit and protection of the holder of the Mortgage Loan, notwithstanding any default or breach by the Redeveloper, its successors or assigns, so long as the Town receives, whether from the Redeveloper or from its lawful transferee or the holder of the Mortgage Loan, its subsidiary, nominee or assignee, the performance to be provided to it.

12. Neither the Redeveloper nor any of its partners, limited or general, shall be personally liable for the payment of the Annual Service Charge nor for the payment of any tax or assessment which may be levied or assessed against any land or building now or hereafter constituting all or a portion of the First Project.

13. (a) Any Notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested, or delivered personally and: in the case of the Redeveloper, addressed to its General Partner, with a first copy to Mimi, addressed to its Chief Executive Officer, and with a second copy to Mimi's Corporate Counsel, each of the foregoing having an address for this purpose at 590 Belleville Turnpike, Kearny, New Jersey 07032; in the case of the Town, addressed to the Mayor of Kearny, New Jersey, with a copy to the Town Attorney, each of the foregoing having an address for this purpose at Town Hall, Kearny, New Jersey; or to any such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the others as provided in this Paragraph.

(b) Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Financial Agreement, the Town shall at the same time forward a copy of such notice or demand to each holder of any Mortgage Loan authorized by this Agreement at the last known address of such holder shown in the records of the Town; provided, however, that the forwarding to the Mortgagee of a copy of a notice or demand to the

Redeveloper, pursuant to this Paragraph 13b, shall not constitute the giving of the notice or demand required by Paragraph 11(c).

(c) (1) After any breach or default referred to in the foregoing paragraph 13b., each such holder shall (insofar as the rights of the Town are concerned) have the right, at its option, to cure or remedy such breach or default (to the extent that it relates to the part of the Redevelopment Area covered by its Mortgage Loan) and to add the cost thereof to its Mortgage Loan.

(2) Any such holder or any permitted transferee of any such holder who shall cure or remedy any breach or default which is referred to in the foregoing Paragraph 13b. shall be entitled to the benefits of the tax abatement previously granted to the Redeveloper prusuant to the Fox-Lance Act and this Financial Agreement, to the same extent that the Redeveloper would then have been if no default had occurred.

14. (a) In the event of any dispute between the parties concerning this Financial Agreement, the matters in controversy shall be resolved by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in the Superior Court of New Jersey. Costs for said arbitration shall be borne equally by the parties.

(b) Anything in the foregoing to the contrary notwithstanding: (1) any dispute between the parties hereto concerning any provision of this Financial Agreement shall be governed by the Laws of the State of New Jersey; and (2) no arbitrator shall have the power or authority to amend, alter, or modify, any part of this Agreement, in any way.

15. If any clause, sentence, subdivision, paragraph, section or part of this Financial Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part hereof directly involved in the controversy in which said judgment shall have been rendered.

16. This Financial Agreement may be modified from time to time only by written agreement duly executed by the parties hereto, provided said modification is consistent with the Act; provided, however, that the parties hereto hereby agree that if the Act is amended during the period described in Paragraph 2 or 6 hereof, with the result that the maximum period of tax exemption previously authorized by the Act is increased, then the period for which the exemption from real property taxation described in Paragraph 3 hereof is granted hereunder shall be automatically increased (but not by more than five (5) years), so that the total period of such exemption granted hereunder shall have such new maximum duration (but not more than twenty (20) years) and the relevant operative provisions of this Financial Agreement shall be deemed automatically amended, nunc pro tunc; provided, further, that if either party deems it appropriate or necessary, the parties hereto shall execute an appropriate amendment to this Financial Agreement, no later than sixty (60) days after the enactment of such amendment to the Act.

IN WITNESS WHEREOF, the Town has caused this Financial Agreement to be duly executed in its name and on its behalf by the Mayor, and the Redeveloper has cuased this Financial Agreement to be duly executed on its behalf by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

ATTEST:

By: _____
David C. Rowlands, Mayor

_____
Town Clerk

MIMI DEVELOPMENT ASSOCIATES I

ATTEST:

By: _____
Dolores Turco, President

_____
Mimi Turco, Secretary

EXHIBIT 3

CERTIFICATE OF COMPLETION

WHEREAS, the Town of Kearny, a municipal corporation of the State of New Jersey, has heretofore entered into a Lease of Land for Private Redevelopment dated

(the "Lease") with

(the "Redeveloper"); and

WHEREAS, pursuant to said Lease, dated

, and recorded

in the Hudson County Clerk's Office, in Book of Leases, page , the Town leased to the Redeveloper the property described in "Schedule A" annexed hereto and hereby made a part hereof; and

WHEREAS, the aforesaid Lease of Land for Private Redevelopment requires the Redeveloper to construct a building or buildings of not less than square feet (the "Improvement"); and

WHEREAS, the Town has reviewed the Redeveloper's plans and has inspected the Improvement as constructed by the Redeveloper on the property described in "Schedule A" and is satisfied that the aforesaid Improvement has been properly constructed and completed in accordance with the aforesaid Lease of Land for Private Redevelopment;

NOW, THEREFORE, the Town hereby certifies as follows:

1. Redeveloper has fully completed all of the construction of the Improvement on that portion of the property described in "Schedule A" which is described in "Schedule B",

annexed hereto and hereby made a part hereof, in accordance with the requirements, terms and conditions of the Lease of Land for Private Redevelopment, dated and this Certificate shall constitute a conclusive and incontestible determination that all of the terms, covenants, agreements and conditions in respect of the construction of the said Improvement on said property, including the dates for commencement and completion of construction thereof, have been fully satisfied and terminated.

2. Redeveloper is entitled to exercise all rights of sale, lease, transfer or other disposition of the property as provided in the Lease of Land for Private Redevelopment dated and all restrictions and prohibitions against assignment and transfer contained in the aforesaid Lease (including, without limitation, those contained in Paragraph 11 thereof) which are conditioned upon the issuance of a Certificate of Completion by the Town, are hereby terminated.

IN WITNESS WHEREOF, the said Town of Kearny has caused this Certificate to be executed by its Mayor, and has caused the corporate seal of the Town of Kearny to be hereunto affixed, and these presents to be attested by the Clerk of the said Town of Kearny, this day of , 197 .

THE TOWN OF KEARNY

ATTEST:

By_____
, Mayor

_____
, Town Clerk

STATE OF NEW JERSEY)
) ss:
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this day of , 197 , before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared , who, being by me duly sworn, did depose and make proof to my satisfaction that he is the Town Clerk of the Town of Kearny; that he well knows the corporate seal of said Town of Kearny, the Town named in the foregoing Certificate; that the seal thereto affixed is the proper corporate seal of said Town of Kearny; that the same was so affixed thereto and the said Certificate signed and delivered by , who was, at the date and execution thereof, the Mayor of the Town of Kearny, in the presence of said deponent, as the voluntary act and deed of said Town; and that the deponent thereupon signed the same as subscribing witness.

Sworn to and subscribed before me
this day of ,
197 .

Attorney at Law of New Jersey

SEVERANCE
LEASE AGREEMENT
BETWEEN
THE TOWN OF KEARNY
AND
MIMI DEVELOPMENT CORP.
ACTING ON BEHALF OF
MIMI REDEVELOPMENT ASSOCIATES I,
A LIMITED PARTNERSHIP IN FORMATION

THIS SEVERANCE LEASE AGREEMENT (the "First Severance Lease"), made as of the day of August, 1979, by and among THE TOWN OF KEARNY, a municipal corporation of the County of Hudson and State of New Jersey (the "Town"), and MIMI DEVELOPMENT CORP., a corporation of the State of New Jersey, having corporate offices at 590 Belleville Turnpike, Kearny, New Jersey 07032 ("Mimi"), acting on behalf of MIMI REDEVELOPMENT ASSOCIATES I, a partnership in formation, which will be qualified to do business under the provisions of the Urban Renewal Corporation and Associations Law of 1961 (N.J.S.A. 40:55C-20 et seq.), as amended and supplemented, and will have its principal office at 590 Belleville Turnpike, Kearny, New Jersey 07032 (the "Partnership")

W I T N E S S E T H

WHEREAS, Mimi, acting on behalf of the Partnership in the capacity of Lessee, and the Town, in the capacity of Lessor, have entered into a Lease of a parcel of land, consisting of acres and lying within the municipal boundaries of the Town, which is more particularly described on the map annexed hereto as Schedule A and incorporated herein by this reference (the " Redevelopment Parcel"), which Lease is hereinafter referred to as the "First Lease"; and

WHEREAS, in connection with the making of a mortgage loan by bank (the "Bank") to the Lessee Redeveloper, the Bank has requested that the Town and the Redeveloper enter into a "Severance Lease", pursuant to which the portion of the Redevelopment

Parcel which is affected by the lien of the mortgage to be made by the Bank is to be separately leased; and

WHEREAS, pursuant to Paragraph 12.e of the First Lease, the Town and the Redeveloper have agreed to execute such an instrument, and now wish to implement their prior agreement in this regard.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The leased property under this Severance Lease shall be the area outlined in red on Schedule A annexed hereto and incorporated herein by this reference (the "First Severance Lease Parcel").

2. The rent hereunder shall be a pro rata share of the rent payable under the First Lease, based upon the ratio between the acreage of the First Severance Lease Parcel and the total acreage of the First Redevelopment Parcel prior to such severance. The date for payment of such rent, the conditions relating to default in payment, and all other applicable provisions of the First Lease shall remain the same with respect to the First Severance Lease Parcel.

3. The Improvements to be constructed on the First Severance Lease Parcel are

4. The term of this Severance Lease shall end on

5. In all other respects, the terms and conditions of this First Severance Lease shall be the same as those of the First Lease; made applicable to the First Severance Lease Parcel.

IN WITNESS WHEREOF, the Town of Kearny, New Jersey has caused this Severance Lease to be duly executed on behalf of the Town by the Mayor, and its seal to be hereunto duly affixed and attested by the Town Clerk of the Town of Kearny, New Jersey, and Mimi Development Corp., on behalf of Mimi Redevelopment Associates I, a limited partnership in formation, has caused this Severance Lease to be duly executed by its duly authorized officers, all as of the day and year first above written.

TOWN OF KEARNY

ATTEST:

By: _____
Mayor

_____
Town Clerk

MIMI DEVELOPMENT CORP., on behalf of MIMI REDEVELOPMENT ASSOCIATES I, a Limited Partnership in Formation

ATTEST:

By: _____
Dolores Turco, President

_____
Mimi Turco, Secretary

Article 10. Maintenance and Repair

a. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall be responsible for and will take good care of the Demised Land and the buildings and improvements erected thereon, and the sidewalks and curbs adjoining the buildings upon the Demised Land and shall keep the same in good order and condition and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and unforeseen and foreseen. When used in this paragraph, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by Tenant shall be equal in quality and class to the original work. Tenant will do or cause others to do all necessary shoring of foundations and walls of the buildings and every other act or thing for the safety and preservation thereof which may be necessary by reason of any excavation or other building operation upon any adjoining property or street, alley or passageway.

b. Landlord shall not be required to furnish any services or facilities to the Demised Land. Landlord shall have no duty or obligation to make any alterations, additions, changes, improvements, replacements or repairs to, or to demolish, any buildings or improvements now or hereafter erected or maintained on the Demised Land. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Demised Land.

Article 11. Damage or Destruction.

a.(1) If, during the term of this lease, all or any part of any building on the Demised Land shall be destroyed or damaged in whole or in part by fire or other insured casualty (including any casualty for which insurance was required pursuant to this Lease, but was not obtained) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate notice thereof.

(2) In that event, and subject to the provisions of Paragraph 11b (and without regard to whether: (i) such damage or destruction shall have been insured against (provided the same was required to be covered under this Lease); or (ii) the insurance proceeds, if any, shall be sufficient for the purpose; or (iii) any fee mortgagee shall permit such insurance proceeds to be used for such repairs, alterations, restoration, replacement or rebuilding), Tenant shall, at its sole cost and expense, promptly repair, alter, restore, replace, and rebuild the same, or reconstruct a similar or dissimilar building, together with improvements and equipment then owned by Tenant, so long as the value thereof shall be at least substantially equal to the value of that damaged and destroyed and which existed immediately prior to such occurrence.

(3) In no event shall Landlord be called upon to repair, alter, replace, restore or rebuild any such building, improvement or equipment or to pay any of the costs or expenses thereof.

(4) If Tenant shall fail or neglect to restore, repair and rebuild with reasonable diligence the building and

COPY

RUSSELL J. PASSAMANO & ASSOCIATES, P.C.
Attorneys at Law
560 Hudson Street
Hackensack, New Jersey 07601
(201) 229-0707
Attorneys for the Plaintiff Hudson Meadows Urban Renewal Corp.
Russell J. Passamano (RP 2240)

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp.,

Plaintiff,

v.

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION; a Body Corporate and Politic of the State of New Jersey and certain of its officers, officials and employees; particularly Anthony Scardino, Thomas Marturano and Robert Ceberio; STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION; MONSANTO COMPANY; AMERICAN ALUMINUM COMPANY; CLARKSON AND FORD COMPANY; FALKE ENGINE REBUILDING CORPORATION; FALKE CORPORATION; GAYTON LUCCHI TOOL COMPANY; G&L TOOL COMPANY; RED DEVIL, INC.; TEXACO, INC.; PRENTICE-HALL CORPORATION SYSTEM I; ACTION PLASTIC COMPANY DIVISION OF DART INDUSTRIES; BEACON DIE MOLD, INC.; CAMPTON TOOL AND DIE COMPANY; DESIGN AND MOLDING SERVICES; DIGITAL COMPUTER CONTROLS; EINSON-FREEMAN DETROY CORPORATION; FOREMOST MANUFACTURING COMPANY, INC.; CARMET COMPANY, AMCAR DIVISION; INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION/ITT MARLOW; GERRIT BEKKER AND SONS, INC.; ARROW PLASTICS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 97- 5727(JWB)

AMENDED
COMPLAINT

Notations re: service.

Frank Catalina

CORPORATION; ROBERT MORE WASTE OIL SERVICE; DEPALMA OIL COMPANY; DIAMOND HEAD OIL REFINING COMPANY, INC.; PSC RESOURCES, INC.; PHILLIPS SCREW COMPANY, INC.; AG-MET OIL SERVICE, INC.; NEWTOWN REFINING CORPORATION; REFINEMENT INTERNATIONAL COMPANY; CRESCENT CONSTRUCTION COMPANY, INC.; ELLDORER CONTRACTING COMPANY; ROBERT MAHLER, an Individual; EMPIRE SOCCER CLUB; METROSTARS; the TOWN OF KEARNY; PETER McINTYRE; and JOHN DOES 1 through 100, said names being fictitious;

Defendants.

Plaintiff Hudson Meadows Urban Renewal Corp. formerly known as Mimi Urban Renewal Development Corp. ("Hudson Meadows" or the "Plaintiff"), by and through its attorneys Passamano & Hunt, a Professional Corporation, by way of Complaint against the defendants, as named and detailed below (collectively the "Defendants"), alleges and says:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9607 and 9613, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 28 U.S.C. §1331, and the doctrines of ancillary and pendant jurisdiction.

2. This Court has authority to issue a declaratory judgment regarding the rights and liabilities of the parties pursuant to

28 U.S.C. §§2201 and 2202, and 42 U.S.C. §7612(g)(2).

3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b) as this action concerns real property that is located within this District in the Town of Kearny, County of Hudson, State of New Jersey, and the releases and threats of releases of hazardous substances as alleged in this Complaint occurred and are occurring within this District and all of the defendants identified herein reside and/or conduct business in this district, or did so during the times relevant to this Complaint.

THE PARTIES

4. Plaintiff Hudson Meadows is a New Jersey corporation having a place of business at 525 Riverside Avenue, Lyndhurst, New Jersey 07071.

5. Defendant Hackensack Meadowlands Development Commission (the "HMDC") is a body corporate and politic of the State of New Jersey having a place of business at 2 DeKorte Park Plaza, Lyndhurst, New Jersey 07071. The HMDC was formed in 1969. The jurisdiction of the HMDC includes zoning, land use and development and waste disposal within a defined area in the Meadowlands. All of the real property at issue in this Complaint falls within that area. Anthony Scardino, Thomas Marturano and Robert Ceberio are and were at all relevant times officers and/or employees of the HMDC (Messrs. Scardino, Marturano and Ceberio are referred to collectively as the "HMDC Officials").

6. Defendant The State of New Jersey Department of

Transportation ("NJDOT") is an agency of the State of New Jersey having a place of business at 1035 Parkway Avenue, C.N. 600, Trenton, New Jersey 08625.

7. Defendant Monsanto Company is a corporation having a place of business at 800 N. Lindbergh Boulevard, St. Louis, Missouri 63141-7843.

8. Defendant American Aluminum Company is a corporation having a place of business at 230 Sheffield Street, Mountainside, New Jersey 07092.

9. Defendant Clarkson and Ford Company is a corporation having a place of business at 30 Industrial Street West, Clifton, New Jersey 07012.

10. Defendant Falke Engine Rebuilding Corporation is a corporation having a place of business at 24 Frederick Street, Waldwick, New Jersey 07463.

11. Defendant Falke Corporation is a corporation having a place of business at 24 Frederick Street, Waldwick, New Jersey 07463.

12. Defendant Gayton Lucchi Tool Company is a corporation having a place of business at 27 Skita Avenue, Carteret, New Jersey 07008.

13. Defendant G&L Tool Company is a corporation having a place of business at 830 Elston Street, Rahway, New Jersey 07065.

14. Defendant Red Devil, Inc. is a corporation having a place of business at 2400 Vauxhall Road, Union, New Jersey 07083.

15. Defendant Texaco, Inc. is a corporation having a place

of business at 2400 West Chester Avenue, White Plains, New York, 10604.

16. Defendant Prentice-Hall Corporation System I is a corporation having a place of business at 150 West State Street, Trenton, New Jersey 08608.

17. Defendant Dart Industries, as itself or through its Action Plastic Company Division, is a corporation having a place of business at 50 Furler Street, Totowa, New Jersey 07512.

18. Defendant Beacon Die Mold, Inc. is a corporation having a place of business at 57 Crooks Avenue, Clifton, New Jersey 07011.

19. Defendant Campton Tool & Die Company is a corporation having a place of business at 40 Sudney Circle, Kenilworth, New Jersey 07033.

20. Defendant Design and Molding Services is a corporation having a place of business at 25 Howard Street, Piscataway, New Jersey 08854.

21. Defendant Digital Computer Controls is a corporation having a place of business at 12 Industrial Road, Fairfield, New Jersey 07006.

22. Defendant Einson-Freeman Detroy Corporation is a corporation having a place of business at 20-10 Maple Avenue, Fair Lawn, New Jersey 07410.

23. Defendant Foremost Manufacturing Company, Inc. is a corporation having a place of business at 941 Ball Avenue, Union, New Jersey 07083.

24. Defendant Carmet Company, as itself or through its Ancar Division, is a corporation having a place of business at 161 East Union Avenue, East Rutherford, New Jersey 07073.

25. Defendant International Telephone and Telegraph Corporation /ITT Marlow is a corporation having a place of business at 1330 Avenue of the Americas, New York, New York 10019.

26. Defendant Gerrit Bekker and Sons, Inc. is a corporation having a place of business at 228 Scoles Avenue, Clifton, New Jersey 07012.

27. Defendant Arrow Plastics Corporation is a corporation having a place of business at 83 Commerce Street, Garfield, New Jersey 07026.

28. Defendant Robert More Waste Oil Service is a corporation having a place of business at 124 Biltmore Street, North Arlington, New Jersey 07032.

29. Defendant Depalma Oil Company is a corporation having a place of business at 713 Pinewood Road, Union, New Jersey 07083.

30. Defendant Diamond Head Oil Refining Company, Inc. is a corporation that on information and belief is or was doing business within this District.

31. Defendant PSC Resources, Inc. is a corporation that on information and belief is or was doing business within this District.

32. Defendant Phillips Screw Company, Inc. is a corporation that on information and belief is or was doing business within this District.

33. Defendant Ag-Met Oil service, Inc. is a corporation that on information and belief is or was doing business within this District.

34. Defendant NewTown Refining Corporation is a corporation that on information and belief is or was doing business within this District.

35. Defendant Refinement International Company is a corporation that on information and belief is or was doing business within this District.

36. Defendant Crescent Construction Company, Inc. is a corporation that on information and belief is or was doing business within this District.

37. Defendant Ell Dorer Contracting Company is a corporation that on information and belief is or was doing business within this District.

38. Defendant Robert Mahler is an individual that on information and belief has a residence or place of business within this District.

39. Defendant Empire Soccer Club ("Empire") is, on information and belief, a corporation or partnership that on information and belief has a place of business at 1 Harmon Plaza, Secaucus, New Jersey 07094. On information and belief, Empire is the parent entity of the MetroStars.

40. Defendant MetroStars is, on information and belief, a corporation or partnership that on information and belief has a place of business at 1 Harmon Plaza, Secaucus, New Jersey 07094.

41. Defendant Town of Kearny is a municipal corporation and governmental subdivision organized and existing under the Constitution and laws of the State of New Jersey and having its offices at 402 Kearny Avenue, Kearny, New Jersey 07032.

42. Defendant Peter McIntyre is the Mayor of the Town of Kearny, having a place of business at 402 Kearny Avenue, Kearny, New Jersey 07032.

43. Defendants John Does 1-100 are as yet unidentified individuals, corporations, partnerships, associations, trusts, unincorporated associations and/or persons or entities of any kind that generated, disposed of or treated any hazardous substance at the Property (as defined below) and/or who arranged for the transport ("generator") and/or who transported or hauled ("transporter") a hazardous substance to the Property for treatment and/or disposal or who otherwise damaged the Plaintiff or its business interests.

44. All defendants named above are "persons" as defined in Section 101 of CERCLA, as amended by SARA.

THE DIAMOND HEAD PROPERTY

45. This litigation concerns certain real property located at 1401 Harrison Avenue in the Town of Kearny, Hudson County, New Jersey. The real property is more particularly described as Block 285, Lots 3, 14 and 15 on the Tax Map of the Town of Kearny, Hudson County, New Jersey (the "Property"). Block 285, Lot 14 is a part of what was formerly known as Block 285, Lot 2.

46. The Property is bordered on the south by I-280, on the

north by Harrison Avenue, on the east by the entrance ramp for I-280 and on the west by property that on information and belief is owned by Campbell Foundry Company.

47. Plaintiff is the owner in fee simple of Block 285, Lot 3.

48. Plaintiff has a leasehold interest in Block 285, Lots 14 and 15.

A. Block 285, Lot 3.

49. Block 285, Lot 3 was owned by the Town of Kearny until November 27, 1950 (the "Lot 3 Parcel").

50. At that time, the Lot 3 Parcel was sold to the defendant Diamond Head Oil Refining Company, Inc. ("Diamond Head Oil")

51. In 1973 the Lot 3 Parcel was sold to Philips Resources, Inc.

52. In 1976, the Lot 3 Parcel was sold to Ag-Met Oil Services.

53. Subsequently, Ag-Met Oil Services changed its name to NewTown Refining.

54. Plaintiff purchased the Lot 3 Parcel in January of 1985.

55. On information and belief, up until 1978, when a Cease and Desist Order was entered, defendant Diamond Head Oil operated the Lot 3 Parcel as a site for the commercial receipt, delivery, treatment, processing and resale of materials which are "hazardous substances" within the meaning of, as used herein, and as defined by CERCLA Section 101(14), 42 U.S.C. §960(14).

56. The Lot 3 Parcel is and was a "facility" within the

meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

57. At all times relevant hereto, the defendants are persons who, at the time of disposal of any hazardous substances, owned or operated the Lot 3 Parcel facility at which hazardous substances were disposed of, arranged for disposal or treatment of hazardous substances at the Lot 3 Parcel facility at which hazardous substances were disposed of and/or transported hazardous substances to the Lot 3 facility.

B. Block 285, Lot 14.

58. Plaintiff is the holder of a long-term development and leasehold interest in Block 285, Lot 14 (documentation shows that the lot number for this parcel has been changed or that the lot has been referred to as part of lot 2 or 2A) (the "Lot 14 Parcel").

59. The Town of Kearny is the owner of that Parcel.

60. The Lot 14 Parcel is adjacent to, and lies to the west, of, the Lot 3 Parcel.

61. Plaintiff acquired its leasehold interest in the Lot 14 Parcel in 1979.

62. In 1978, prior to the time that the Plaintiff acquired its interest in the Lot 14 Parcel, the HMDC approved the disposal by the DOT of hazardous materials on that Parcel.

63. The HMDC had approved, among other things, allowing the DOT to dispose on that Parcel hazardous materials including oil-contaminated materials from the construction of Route I-280.

64. On information and belief, the DOT and HMDC failed to

properly oversee the disposal and failed to ensure compliance with conditions set forth for the disposal.

65. On information and belief, some of the oil-contaminated materials deposited on the Lot 14 Parcel, or other of the hazardous materials on the Lot 14 Parcel, came from the Lot 3 Parcel.

66. The Lot 14 Parcel is and was a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

67. At all times relevant hereto, the defendants are persons who, at the time of disposal of any hazardous substances, owned or operated the Lot 14 Parcel facility at which hazardous substances were disposed of, arranged for disposal or treatment of hazardous substances at the Lot 14 Parcel facility at which hazardous substances were disposed of and/or transported hazardous substances to the Lot 14 facility.

C. **Block 285, Lot 15.**

68. Plaintiff claims a long-term development and leasehold interest in Block 285, Lot 15 (the "Lot 15 Parcel") through a lease entered into with the Town of Kearny, which at one time was the owner of that Parcel.

69. The DOT claims an interest in the Lot 15 Parcel through a Deed. No such Deed was mentioned to the Plaintiff at the time it acquired its leasehold interest in the Lot 15 Parcel and the existence of the Deed was not shown in the Plaintiff's title work.

70. The Lot 15 Parcel is adjacent to, and lies to the east, of, the Lot 3 Parcel.

71. Plaintiff entered the lease with the Town of Kearny for the Lot 15 Parcel in 1979.

72. On information and belief, there are hazardous materials on the Lot 15 Parcel.

73. On information and belief, some of the hazardous materials on the Lot 15 Parcel may have come from the Lot 3 Parcel and the construction of I-280 in the late 1970's.

74. The Lot 15 Parcel is and was a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

75. At all times relevant hereto, the defendants are persons who, at the time of disposal of any hazardous substances, owned or operated the Lot 15 Parcel facility at which hazardous substances were disposed of, arranged for disposal or treatment of hazardous substances at the Lot 15 Parcel facility at which hazardous substances were disposed of and/or transported hazardous substances to the Lot 15 facility.

76. CERCLA authorized the United States Environmental Protection Agency (the "EPA") to expend monies to abate the release or threat of release of hazardous substances from a facility such as the Diamond Head Oil Site and to recover those costs from other parties pursuant to Section 107, 42 U.S.C. § 9607.

77. CERCLA authorized the EPA to expend monies on both "removal actions" (generally short-term or temporary measures as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23)) and "remedial actions" (generally long-term permanent measures as

defined in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24)). The costs of both removal actions and remedial actions are referred to as "response costs" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

78. CERCLA establishes several classes of parties who are or may be liable for any response costs at a facility from which there is or has been a release or threat of release of hazardous substances including the current owner of the facility, the current operator of the facility, any person who at the time of disposal of any hazardous substances owned or operated the facility at which hazardous substances were disposed of, any person who arranged for disposal or treatment of hazardous substances at a facility at which hazardous substances were disposed of and any person who transported substances to such a facility, *inter alia*. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

79. Such persons are referred to as Potentially Responsible Parties (herein referred to individually as a "PRP" and collectively as "PRPs").

80. Any PRP who may be liable under Section 107 of CERCLA for response costs may recover its costs for the performance of removal and remediation actions from other liable persons under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613.

81. The National Contingency Plan (the "NCP") pursuant to 33 U.S.C. § 1321(c) and Section 105 of CERCLA, 42 U.S.C. § 9605, established procedures for evaluating, ranking and placing

inactive hazardous substance facilities on the National Priority List (the "NPL"). The NCP also established requirements for removal and remedial actions.

82. EPA alleged that the Defendants in this action, among others, are PRP's.

83. Plaintiff was an innocent purchaser that did not generate, transport or dispose of any hazardous wastes on the Property and was not responsible for allowing, authorizing or placing any hazardous materials on the Property and, without any admission of liability therefor, has expended money for the preparation of a remedial investigation and feasibility studies, to perform removal and remedial actions and for additional response costs as defined in 42 U.S.C. §§9607a, 3 and 4.

84. Plaintiff will continue to incur costs to complete the remedial investigation and feasibility study and to continue removal and remedial actions and for additional costs or response as defined herein.

85. The costs described in the preceding paragraph were, are and will be incurred by the Plaintiff as necessary costs of response consistent with the NCP.

86. The Defendants are each PRPs as generators and/or transporters and/or haulers to the Property of various chemical substances, including hazardous substances, as defined in CERCLA, 42 U.S.C. §§ 1901, *et seq.*, as amended by Pub. L. 99-499(SARA).

COUNT ONE

CERCLA 107 CONTRIBUTION
BY GENERATORS AND TRANSPORTERS

1. Plaintiff repeats and realleges each and every allegation in the foregoing Paragraphs as if set forth at length herein.

2. Pursuant to Section 107(a)(3) and (4) of CERCLA, 42 U.S.C. §§ 9607(a)(3,4), any person who owns and arranges for the transport ("generator") or who transports or hauls ("transporter") a hazardous substance to a facility at which hazardous substances were disposed of, are liable for necessary costs of response to a release or threat of release of hazardous substances at or from a facility, which costs are incurred by any other person consistent with the NCP.

3. Defendants, as generators and transporters of hazardous waste to the Property at times when hazardous wastes were disposed of there, are each strictly liable jointly, severally and in the alternative, to the Plaintiffs for all necessary costs of response incurred and to be incurred by said Plaintiff consistent with the NCP and/or as a result of any action filed against it.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to be strictly liable to Plaintiff for all response costs, together with interest thereon, regarding the Property, past, present and future;

(B) Ordering that Defendants, jointly, severally and in the alternative, to immediately reimburse Plaintiff for response costs thus far incurred by Plaintiff, consistent with the NCP, together with lawful interest thereon, where applicable;

(C) Ordering that Defendants, jointly, severally and in the alternative are liable to pay Plaintiff immediately upon Plaintiff's request, all future response costs, consistent with the NCP together with lawful interest thereon, where applicable;

(D) Ordering Defendants to each pay Plaintiff its costs of suit, including reasonable attorneys fees and disbursements; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT TWO

CERCLA CONTRIBUTION
BY GENERATORS AND TRANSPORTERS

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Count as if set forth at length herein.

2. Pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), any person may seek contribution from any other person who is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

3. Plaintiff has a right of contribution against each and every generator and transporter to recover costs of response related to the Property, incurred and to be incurred by each Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to be liable to Plaintiff pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1),

for contribution to the necessary costs of response incurred and to be incurred by Plaintiff regarding the Property, together with lawful interest thereon;

(B) Ordering that Defendants, jointly, severally and in the alternative, to immediately pay to Plaintiff their share of contribution for response costs thus far incurred by Plaintiff, together with lawful interest thereon;

(C) Ordering Defendants to pay Plaintiff its costs of suit, including reasonable attorneys' fees and disbursements; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT THREE

CONTRIBUTION AND INDEMNITY

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Each and every Defendant is strictly liable, jointly, severally and in the alternative, to Plaintiff for any and all costs incurred and to be incurred by Plaintiff related to the Property, including but not limited to remedial, removal and other response costs and are, thus, liable over to said parties for indemnity and/or contribution under federal and applicable state law for all costs incurred and to be incurred by Plaintiff related to the Property.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to indemnify Plaintiff and/or contribute to Plaintiff for all removal, remedial and other response costs which Plaintiffs have incurred and will continue to incur related to the Property, together with lawful interest thereon;

(B) Ordering Defendants, jointly, severally and in the alternative, to pay to Plaintiff all removal, remedial and other response costs already incurred or, alternatively, contribute to such costs incurred by Plaintiffs in an amount to be determined by this Court, together, together with lawful interest thereon;

(C) Declaring Defendants strictly liable, jointly, severally and in the alternative to pay Plaintiff for all future removal, remedial and other response costs which may be incurred by Plaintiff in full or, alternatively, in accordance with contribution to be determined by this Court, together with the lawful Ordering Defendants to pay Plaintiff its costs of suit, including reasonable attorneys' fees and disbursements; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT FOUR

NEGLIGENCE

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Defendants owed Plaintiff a duty of care to handle, transport and/or ship any and all hazardous substances generated

by them to the Property in suitable and acceptable condition for treatment, storage and/or disposal so as to prevent any harm or injury to public health and welfare and to the environment.

3. Defendants negligently caused or permitted hazardous substances to be released by their negligent handling of same so as to allow the release or threat of release of hazardous substances as the Property. Defendants knew or should have known that the manner in which they conducted these activities in relation to the Property could forseeably cause the release of hazardous substances.

4. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered and will continue to suffer damages, including but not limited to, the expenditure of removal, remedial and other response costs at and from the Property.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to be liable to Plaintiff for negligence;

(B) Ordering Defendants, jointly, severally and in the alternative, to immediately reimburse Plaintiff for all removal, remedial and other response costs related to the Property already incurred or to be incurred, together with lawful interest thereon;

(C) Declaring that Defendants shall pay to Plaintiff immediately upon Plaintiff's request, all removal, remedial and other response costs and damages related to the Property which may, in the future, be incurred and/or suffered by Plaintiff as

the result of Defendants' negligence, including and together with lawful interest thereon;

(D) Ordering Defendants to pay each Plaintiff its costs of suit, including reasonable attorney's fees and disbursements; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT FIVE

JOINT TORTFEASORS ACT

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. The New Jersey Joint Tortfeasors Act, N.J.S.A. 2A:53A-1 *et seq.*, (the NJJTA") provides for the right of contribution among joint tortfeasors.

3. Notwithstanding the fact that Plaintiff disclaims and denies any liability for any and all damages related to the Property, Plaintiff is entitled to and hereby requests contribution from Defendants pursuant to the NJJTA, to the extent that any judgment, damages, costs or payments are recovered against or incurred by them.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants liable to Plaintiff pursuant to the terms and strictures of the New Jersey Joint Tortfeasors Act, for any judgment, damages, costs or payments assesses against

the Plaintiff herein which damages, costs or payments are related to any of Defendants' activities relating to the Property, together with lawful interest thereon;

(B) Ordering Defendants to pay Plaintiff its costs of suit, including reasonable attorney's fees and disbursements; and

(C) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT SIX

NEW JERSEY SPILL COMPENSATION AND CONTROL ACT

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. The New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, *et seq.* (the "Spill Act"), prohibits the unauthorized discharge of petroleum products and other hazardous substances within the State of New Jersey.

3. "Hazardous substances" are defined under the Spill Act, N.J.S.A. 58:10-23.11b(k) to include petroleum products as well as the list of hazardous substances adopted by the EPA pursuant to Section 311 of the Federal Water Pollution Control Act of 1972, Pub. L. 92-500, as amended by the Clean Water Act of 1977, Pub. L. 95-217, 33 U.S.C. §§ 1251, *et seq.* and the list of hazardous substances adopted by the EPA pursuant to Section 101 of CERCLA, Pub. L. 96-510, 42 U.S.C. §§ 9601, *et seq.*

4. Pursuant to N.J.S.A. 58:10-23.11g, any person who has discharged a hazardous substances, or is in any way responsible

for any hazardous substance, shall be strictly liable, jointly or severally, without regard for fault, for all clean-up and removal costs no matter by whom incurred.

5. On January 10, 1992, the Spill Act was amended to provide a cause of action to any private party who remediates and removes a discharge of a hazardous substances against all other discharges and persons in any way responsible for such discharge, N.J.S.A. 58:10-23.11f(a)(2).

6. Defendants as generators and transporters of hazardous substances to the Property are persons "in any way responsible" for said hazardous substances which have been discharged within the State of New Jersey.

7. Defendants are "persons" as defined under the Spill Act, N.J.S.A. 58:d10-23.11.

8. As a result of said discharges of hazardous substances at the Property, Defendants are strictly liable to Plaintiff, jointly, severally and/or in the alternative for the cleanup and removal of all discharge of hazardous substances at and from the Property.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring that Plaintiff is entitled to contribution and indemnification from Defendants for costs and damages as a direct and proximate result of Defendants' release and discharge of hazardous substances at the subject property, together with lawful interest thereon;

(B) Declaring that Defendants are liable to Plaintiff for all injuries and damages related to the Property ans suffered by Plaintiff as a proximate result of Defendants' failure to notify the appropriate government agency of said releases and discharges required by law to be reported, together with lawful interest thereon;

(C) Ordering Defendants to Pay Plaintiffs all costs and damages related to the Property which Plaintiff has or will suffer as the result of Defendants' release and discharge of hazardous substances, together with lawful interest thereon;

(D) Ordering Defendants to pay Plaintiff's costs for this action including reasonable attorneys' fees and disbursements;

(E) Punitive damages; and

(F) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT SEVEN

BAD FAITH CONDUCT BY THE HMDC AND THE HMDC OFFICIALS

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. In 1986, the Plaintiff submitted to the HMDC a development plan for the Property.

3. The plan contemplated a mixed use development on the Property consisting of office space a hotel and retail space.

4. In 1993, the Plaintiff submitted to the HMDC a complete

application that met all HMDC criteria for final preliminary approval.

5. Between 1986 and 1993, the HMDC held meetings and had communications with the Plaintiff concerning the proposed development, and requested that the Plaintiff provide to the HMDC studies and reports dealing with, among other things, engineering, transportation and site characteristics. Plaintiff's information showed that the Property was a developable site.

6. Up until that time, the HMDC did not set forth any requirement for a clean-up of the Property as a condition precedent to considering the Plaintiff's request for approval of the development plan. Since, as detailed above, the HMDC had allowed the disposal of at least the oil contaminated soil on the Lot 14 Parcel and had failed to properly oversee the disposal of that oil contaminated soil or to ensure compliance with conditions set forth for the disposal, the HMDC was well aware of the condition of the Property during all of the time that it held meetings and communicated with the Plaintiff concerning the development.

7. In preparing and presenting its proposals, the Plaintiff had anticipated that any clean-up that might be required would be performed as part of building an approved development. This would provide the benefit of any needed clean up within the context of an economically feasible development plan.

8. Plaintiff invested significant amounts of money and management time into creating the development plan meeting with

and making presentations to the HMDC and responding to the HMDC's requests for additional information and studies.

9. HMDC then informed the Plaintiff that no further action would be taken concerning consideration for approval of the Plaintiff's development plan until after the Plaintiff had completed a clean-up of the Property. The HMDC also brought up issues as to title to the Lot 15 Parcel. Title issues would not, however, have blocked the Plaintiff's efforts. If those issues could not have been resolved through adjudication or negotiation, the Plaintiff would have modified its development plan to use only the Lot 3 and Lot 14 Parcels.

10. Given the costs involved in a clean-up, the imposition of such a requirement as a condition precedent had a more serious effect. Through the new condition, the HMDC was seeking to put the Plaintiff in the position of having to make the financial commitment for a clean up without knowing whether or not it would be allowed to enjoy the economic benefits of the development.

11. The HMDC and the HMDC Officials were aware that the condition precedent would impair the Plaintiff's ability to develop and enjoy the economic benefits of the Property.

12. On information and belief, the HMDC has not imposed on other developers the same restriction and condition precedent that have been imposed on the Plaintiff.

13. Subsequently, the Plaintiff was given reason to believe that the HMDC Officials acting as themselves and through the HMDC, had imposed different and more stringent conditions on the

Plaintiff.

14. These acts were taken by the HMDC and the HMDC Officials in bad faith and as a way of improperly preventing the Plaintiff from developing the Property and from enjoying the economic benefits of the Property.

15. The acts of the HMDC and the HMDC Officials were a part of a larger scheme to prevent the Plaintiff from developing any of its properties within the Meadowlands area.

16. The successful development of the Property would have enhanced the Plaintiff's credibility and given it experience and a track record of success in developing projects in the Meadowlands that would benefit the Plaintiff in developing its other Meadowlands properties.

17. The HMDC and the HMDC Officials acted and are continuing to act intentionally and in bad faith in an effort to damage the Plaintiff and its business.

18. The conduct of the HMDC and the HMDC Officials has damaged and is continuing to damage the Plaintiff.

19. The Plaintiff is entitled to money damages and for injunctive relief to prevent the HMDC and the HMDC Officials from continuing their bad faith conduct.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the following relief:

(A) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT EIGHT

ESTOPPEL

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. In 1986, the Plaintiff submitted to the HMDC a development plan for the Property. The plan contemplated a mixed use development on the Property consisting of office space, a hotel and retail space.

3. Between 1986 and 1993, the HMDC held meetings and had communications with the Plaintiff concerning the proposed development, and requested that the Plaintiff provide to the HMDC studies and reports dealing with, among other things, engineering, transportation and site characteristics. Plaintiff's information showed that the Property was a developable site.

4. In reasonable reliance on the statements and representations of the HMDC, Plaintiff invested significant

amounts of money and management time into the development plan, obtaining the additional information requested by the HMDC and commissioning the additional studies requested by the HMDC.

5. In 1993, the Plaintiff submitted to the HMDC a complete application that met all HMDC criteria for final preliminary approval.

6. Up until that time, the HMDC did not set forth any requirement for a clean-up of the Property as a condition precedent to considering the Plaintiff's request for approval of the development plan. Since, as detailed above, the HMDC had allowed the disposal of at least the oil contaminated soil on the Lot 14 Parcel, the HMDC was well aware of the condition of the Property during all of the time that it held meetings and communicated with the Plaintiff concerning the development.

7. In preparing and presenting its proposals, the Plaintiff had anticipated that any clean-up that might be required would be performed as part of building an approved development. This would provide the benefit of any needed clean up within the context of an economically feasible development plan.

8. On information and belief, the HMDC has not imposed on other developers the same restriction and condition precedent that have been imposed on the Plaintiff.

9. The HMDC's change in position to impose the different and more stringent condition on the Plaintiff damaged the Plaintiff and prevented the Plaintiff from developing the Property and from enjoying the economic benefits of the Property.

10. The HMDC's acts were a part of a larger scheme by the HMDC and the HMDC Officials to prevent the Plaintiff from developing any of its properties within the Meadowlands area.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the following relief:

(A) Barring the HMDC from imposing a clean up as a condition precedent to considering Plaintiff's development plans;

(B) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(C) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(D) Compensatory damages;

(E) Punitive damages; and

(F) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT NINE

BAD FAITH CONDUCT BY THE HMDC (KEEGAN PROPERTY)

THE KEEGAN PROPERTY

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. In addition to the Diamond Head Property, the Plaintiff

owns or has long term leasehold interests and development rights in or an easement on certain real property located on Bergen Avenue in the Town of Kearny, Hudson County, New Jersey sometimes referred to as the "Keegan Landfill" (the " Keegan Property"). The Keegan Property totals approximately 450 acres.

3. The Keegan Property includes uplands and wetlands areas, a portion of which is known as the Kearny Marsh.

4. The Keegan Property is bordered on the south by Harrison Avenue and Conrail rail line, on the north by Boonton rail line and the Belleville Turnpike, on the east by the New Jersey Turnpike (Western Spur) and on the west by Lackawanna rail line.

5. Prior to the time that the Plaintiff acquired any interest in the Keegan Property, part of that Property had been used as a municipal landfill.

6. At one point, the HMDC, in considering a request to operate landfill operations on additional parcels, determined that portions of the Keegan Property were "virgin land", that landfilling was not a desirable land use, that landfilling was opposed by the people and officials of the Town of Kearny and that reopening or expanding landfill operations would postpone, complicate and likely preclude the use of that parcel for the large scale development for which the parcel was zoned.

7. Since acquiring an interest in the Keegan Property, the Plaintiff has sought to develop that Property.

8. In 1979, the Plaintiff proposed a development plan for the Keegan Property that involved warehouse space and a light

industrial park for high technology companies.

9. In 1985, Plaintiff proposed a master plan for the Keegan Property that included a major league baseball stadium, 3.3 million square feet of commercial office space, 800,000 square feet of retail space and 700,000 square feet to be used for a foreign trade zone.

10. In 1986, Plaintiff and Western Development Corp. ("Mills") entered into negotiations for a joint venture to develop a regional shopping center on the Keegan Property, which negotiations terminated before any project was approved or built.

11. In 1987, Plaintiff revised the Master Plan to eliminate the baseball stadium and to increase the retail component of the project to 1.5 million square feet in keeping with the proposed regional shopping center concept.

12. Plaintiff expended money and management time and proceeded with its plans on the reasonable belief that the HMDC was acting in good faith to review the Plaintiff's development proposals.

13. At that time, the Plaintiff was not aware that the HMDC would attempt to improperly take control of the Plaintiff's property rights for its own use and benefit and for the use and benefit of other private parties or that the HMDC was contemplating reopening landfilling operations on the Property.

14. The HMDC and the HMDC Officers refused, without justification, to comply with Plaintiff's reasonable request for a timely determination as to whether or not the proposed regional

shopping center fit within the HMDC's zoning designation and special use.

15. HMDC unreasonably attempted to force the Plaintiff to perform an environmental impact statement ("EIS") for the Property. The EIS would have cost the Plaintiff $300,000 - 500,000 and related to the effect of development, but would not be of any benefit to the Plaintiff unless there was an allowable use for the Property.

16. The EIS would, however, have value to the HMDC in its plan to take control of the Plaintiff's property rights for its own use and benefit and for the use and benefit of other private parties.

17. The HMDC in effect was putting the Plaintiff in the position of financing studies that would benefit the HMDC in its plans to take the Property from the Plaintiff, but which would have no value to the Plaintiff unless they were performed in the context of a development that was an allowed use within the regional development plan, which the HMDC had no intention of approving. Rather, the HMDC's actions were a part of the scheme to condemn the Keegan Property and reopen the site as a materials handling center.

18. Subsequently, the Plaintiff was given reason to believe that the HMDC, and the HMDC Officers, had acted in bad faith and as a way of improperly using its zoning and other authority to prevent the Plaintiff from developing and enjoying the economic benefits of the Keegan Property and as a means of taking from the

Plaintiff control of that Property.

A. Bad Faith by the HMDC in Interfering with the Plaintiff's Contractual Rights and Attempting to Improperly Condemn the Plaintiff's Property and Gain Control of Plaintiff's Wetlands Areas for the Benefit of Other Private Parties.

19. The areas under the jurisdiction of the HMDC contain large tracts of wetlands.

20. The Plaintiff's Property is particularly valuable in that it includes developable uplands as well as wetlands that can be enhanced and used as "mitigation" for wetlands that are filled in other parts of the Meadowlands.

21. Development in wetlands areas requires, among other things, compliance with the Federal Clean Water Act (Section 404).

22. In or around 1987, PanAm improperly filled in wetlands areas at the Teterboro Airport.

23. Because of that improper filling in of wetlands areas, PanAm needed a large wetlands area to provide mitigation.

24. The HMDC knew that the Kearny Marsh, which is a large wetlands area, was leased to the Plaintiff.

25. The HMDC improperly attempted to broker a deal between PanAm and Hartz Corporation for wetlands mitigation using the Plaintiff's property.

26. When Plaintiff learned of this attempt, the Plaintiff informed the parties that negotiations involving the HMDC and other private parties concerning the Plaintiff's property could not take place absent the involvement of the Plaintiff.

27. PanAm then began negotiating with the Plaintiff.

28. When those negotiations broke down, the Plaintiff became aware that the HMDC was attempting to induce a breach of the Plaintiff's leasehold and development rights and to gain control of the Plaintiff's property or to improperly gain control of the Plaintiff's property through condemnation of the property through the guise of a materials handling complex.

29. During this time, the HMDC developed and proposed a Special Area Management Plan ("SAMP") that favored future significant development in the major growth areas of Secaucus, Carlstadt and Moonachie and required the filling of approximately 900 acres of wetlands.

30. In 1987, the HMDC entered into a memorandum of understanding with the Army Corps of Engineers and the United States Environmental Protection Agency to facilitate implementation of the SAMP.

31. In 1991, the HMDC advised the Plaintiff that it (the HMDC) proposed to reopen the Keegan landfill in order to generate hundreds of millions of dollars in income over a period of years for the purpose of generating funds for the HMDC to close the Keegan landfill and the MSLA 1-D landfill located in the District in Kearny. In addition to generating hundreds of millions of dollars in funds, the environmental impact credits gained from these landfill closures would partially compensate for wetlands destruction proposed under the SAMP for the environmental improvement plan. The HMDC was aware of the amounts of money that could be generated, but withheld that information from the

Plaintiff.

32. However, at the same time, the HMDC was publicly stating a position that the wetlands would not be needed for or used as a part of the proposed project involving reopening of the Keegan Landfill.

33. Plaintiff objected to condemnation of its wetlands when in fact the HMDC had already confirmed that those wetlands would not be used or needed as part of the landfill.

34. As later became evident, the HMDC's action towards the Plaintiff were part of a larger scheme to improperly take control of the Plaintiff's Property, deprive Plaintiff of the benefit of its Property, all for the benefit of the HMDC and certain private parties.

35. While SAMP was in its planning stage and before it became public, HMDC passed a resolution that called for condemnation of the Plaintiff's Property, both uplands and wetlands purportedly for a materials handling complex involving the reopening of the Keegan Landfill for a materials handling complex.

36. Unbeknownst to Plaintiff at the time, as part of the SAMP, the HMDC and other governmental agencies proposed a wetlands mitigation bank the purpose of which was to provide wetlands offsets in certain areas so as to allow for the filling in of wetlands in other areas as part of other private development plans.

37. On information and belief, during the relevant time

period, the HMDC changed the zoning requirements of a tract owned or controlled by Terminal Corporation ("Terminal" or "Empire") to accommodate a proposed plan involving a large scale development that included millions of square feet of development including shopping mall space, commercial space and a hotel. The Terminal tract is composed of approximately 40 acres of uplands and 206 acres of wetlands. As proposed, the Terminal development required a large-scale filling in of the wetlands areas. At least three other large-scale developments consisting of millions of square feet of commercial, retail and warehouse space along with thousands of residential units were proposed by HMDC as "preferred alternatives" in the SAMP. All of these projects would require substantial filling of wetlands. In addition, the transportation improvements necessary for these developments would also require the significant filling of wetlands.

38. At that time, it was unlikely that any of the projects could have received the necessary permits from the Army corps of Engineers for development of the wetlands areas without the SAMP.

39. The HMDC and other private developers would benefit if the HMDC was able to improperly condemn Plaintiff's wetlands, under the guise of reopening the Keegan Landfill, and then deposit those wetlands into the mitigation bank.

40. In order to attempt to garner support for the proposal, the HMDC attempted to spread false information that they (the HMDC) had not received proposals for development of the Property and that Kearny would be solely liable for $100,000,000 in clean-

up costs for the site.

41. In 1992, the Town of Kearny passed a resolution opposing the reopening of the landfill and supporting the Plaintiff's commercial development. The Hackensack Meadowlands Mayors' Council also voted against the HMDC's plan in 1992.

42. The HMDC acted improperly in attempting to condemn the Plaintiff's Property and to create and perpetuate a falsehood that the Plaintiff was not and could not develop the Property.

43. As part of this scheme, the HMDC also prevented the Plaintiff from moving forward with development on other parcels that it (the Plaintiff) owns or controls within the Meadowlands area.

44. The HMDC and its officers acted and are continuing to act intentionally and in bad faith in an effort to damage the Plaintiff and its business.

45. The conduct of the HMDC and its officers has damaged and is continuing to damage the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the following relief:

(A) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent

development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT TEN

CONFLICT OF INTEREST

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Hudson Meadows has, for some years, had applications for development pending before the HMDC for the Property. The HMDC has acted unreasonably and in bad faith to prevent the Plaintiff's applications from being acted on.

3. The HMDC had historically considered Plaintiff's Kearny Property to be suitable for development. In its 1971 Decision on the Application of the Municipal Sanitary Landfill Authority for the Construction and Operation of Sanitary Landfills in Kearny, New Jersey (the "1971 Decision"), the HMDC specifically indicated that the Keegan Site was projected for large scale special use development and should not be re-opened as a garbage dump.

4. In recent years, the HMDC has taken actions contrary to its stated 1971 Decision by targeting the Keegan Site for the disposal of solid wastes. Income would be generated therefrom for the use, benefit, administrative convenience and fiscal longevity of the HMDC.

5. The HMDC, acting as zoning authority, land use authority, solid waste authority and in its own financial interest has conflicts of interest that have resulted in improper use of its authorities to attempt to deprive the Plaintiff of its property and the interfere with the Plaintiff's property and contractual rights.

6. Acting in furtherance of its self-interested agenda regarding the Kearny Property, made applications to other regulatory authorities and passed resolutions unfairly discriminating against Hudson Meadows.

7. The HMDC used its solid waste authority to permit a materials handling complex so as to provide a public use for condemnation, then used its zoning authority to pass a resolution designating the Property for open space, which designated the Property as not-for-development. This use of the zoning authority would negatively affect the value of the Property.

8. The HMDC palpably abused its discretionary authority, in that the action taken was in all regards arbitrary, capricious and unreasonable and otherwise wrongful.

9. Plaintiff Hudson Meadows' financial interests have been adversely affected and manifest injustice created by Defendant HMDC's conflict of interest and the arbitrary and capricious application of its planning, zoning, land use and solid waste powers coupled with its own financial self-interest.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the

following relief:

(A) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT ELEVEN

IMPROPER TAKING

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. On April 3, 1997, the HMDC enacted Resolution 97-20, thereby ratifying the HMDC Open Space Plan.

3. The stated purpose of Resolution 97-20 and the underlying Open Space Plan is, in pertinent part, the permanent designation of certain public and private lands, including Hudson Meadows' Kearny Property, as "open spaces".

4. To achieve the permanent designation of such open spaces on private lands, the plan approved by the HMDC in Resolution 97-20 recommends the adoption of a taking of development rights

program, whereby the rights of one private property owner are transferred to another property owner ("TDR Program").

5. Through the TDR Program approved by Resolution 97-20, the HMDC intends to zone certain properties as non-developable. As "compensation" for the open spaces classification of affected private lands, the HMDC intends to assign development credits to affected land owners which development credits may later be "sold" to those preferred land owners selected by the HMDC whose properties have not been designated as non-developable.

6. The TDR Program classifies Plaintiff's Kearny Property as open spaces and therefore constitutes a planning procedure that permanently deprives Hudson Meadows of its constitutional property right to develop the Kearny Property. Consequently, the effect of Resolution 97-20 constitutes a regulatory, if not physical, taking of Plaintiff's lands and has denied Plaintiff of substantially all economically viable uses.

7. The adoption of the Open Space Program by Resolution 97-20, and its categorization of Plaintiff's lands as open spaces, constitutes a condemnation of Plaintiff's lands for a public use.

8. The TDR Program violates the rights of the Plaintiff under the Constitution of the United States to full and perfect compensation in money for the property taken for a public use.

9. Accordingly, Resolution 97-20 approves a planning policy which is unconstitutional and deprives Hudson Meadows, and others, of its constitutionally protected property rights.

10. Further, the HMDC's adoption of Resolution 97-20

conflicts with Resolution 97-22, in that Resolution 97-20 evidences the HMDC's planning mandate that the Kearny Property be regulated as permanent open spaces. This contemporaneous policy statement collides with the "neutral" mission of Resolution 97-22 in evaluating the Keegan Site for its development potential.

11. Resolution 97-20 also approves the HMDC's open space plan in draft form. Upon information and belief and reasonable reliance thereon, Resolution 97-20 also gives effect to the unreviewed final form of the HMDC's open space plan without the benefit of additional public commentary or any further public consideration and action by the HMDC Commissioners. Accordingly, the HMDC Commissioners have made an impermissible delegation of their administrative authority to the non-appointed staff members of the HMDC.

12. Moreover, the HMDC's planning statement and implementation of the TDR Program, as adopted by Resolution 97-20, is prejudicial to Plaintiff's pending development application and evidences a clear conflict between the HMDC's statutory obligation to fairly adjudicate Hudson Meadows' development application

13. Plaintiff Hudson Meadows' financial interests have been adversely affected and manifest injustice created by Defendant HMDC's arbitrary and capricious application of its planning, zoning and land use powers and the deprivation of Plaintiff's Constitutional rights.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the

following relief:

(A) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT TWELVE

CONSPIRACY BY THE HMDC OFFICIALS

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. The Plaintiff owns other valuable property within the Meadowlands District and subject to the jurisdiction of the HMDC, including property known as the Keegan landfill.

3. The Plaintiff has submitted development plans concerning the Keegan property, which plans involve approximately 5 million square feet of commercial and mixed use space having a value of approximately $500,000,000.

4. This would be one of the largest developments in the Meadowlands.

5. In addition, Hudson Meadows has control over 350 (approximate) acres of wetlands that have valuable wetlands mitigation rights

6. The HMDC and the HMDC Officials have acted over a period of years to improperly use zoning and solid waste authority and other means to attempt to condemn and take control of these valuable properties, through various guises including claiming a public use as a solid materials handling complex (landfill).

7. When those efforts were thwarted by, among other things, public opposition and changes in solid waste laws, the HMDC continued to improperly attempt to wrest control of the Plaintiff's meadowlands properties.

8. The HMDC Officials have acted in concert in an intentional scheme to deprive Plaintiff of its property rights and to take control of the Plaintiff's property.

9. As a part of that larger conspiracy and scheme, the HMDC Officials conspired to prevent the Plaintiff from developing the Diamond Head Property, as detailed above.

10. The HMDC Officials acted in concert to damage the Plaintiff and its business.

11. The conduct of the HMDC Officials has damaged and is continuing to damage the Plaintiff.

12. The Plaintiff is entitled to money damages and for injunctive relief to prevent the HMDC Officials from continuing in their efforts to damage the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment

against the HMDC and its officers and the HMDC Officials for the following relief:

(A) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages of at least $500,000,000;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT THIRTEEN

INTERFERENCE WITH CONTRACT

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Plaintiff has contractual leasehold and development rights in the Keegan Property. The contractual leasehold and development contracts were between the Plaintiff and the Town of Kearny.

3. The HMDC and the HMDC Officers had knowledge of the Plaintiff's contractual rights.

4. Defendants Empire and MetroStars had knowledge of the Plaintiff's contractual rights.

5. Defendant Town of Kearny had knowledge of the Plaintiff's contractual rights.

6. Defendant McIntyre is Mayor of Kearny and employee of the MetroStars.

7. Despite having knowledge of the Plaintiff's rights, the HMDC and the HMDC Officers have engaged in a course of conduct to intentionally interfere with the Plaintiff's contractual rights, to deprive Plaintiff of its contractual and property rights.

8. Empire, the MetroStars and the Town of Kearny have been conspiring with the HMDC and the HMDC Officers to interfere with the Plaintiff's contractual rights and to deprive the Plaintiff of its contractual and property rights.

9. The Keegan Property is zoned for special use and commercial use, which allows for large-scale development projects. The HMDC has, at various times, confirmed that the best use of the Property was for development, not as a landfill.

10. Since acquiring its interest in the Keegan Property, the Plaintiff has sought to develop that Property. The Plaintiff's proposals have included proposals for a light industrial park for high technology companies, a master plan that included a major league baseball stadium, 3.3 million square feet of commercial office space, 800,000 square feet of retail space and 700,000 square feet to be used for a foreign trade zone and a joint venture to develop a regional shopping center on the Keegan Property having a value of approximately $500,000,000.

11. The Plaintiff was willing and capable of completing the

development projects.

12. Despite the fact that the Plaintiff had proposed plans to develop the Property, and despite the fact that the HMDC confirmed that the best use of the Property is not a landfill, the HMDC has attempted to use its solid waste management authority to reopen the Property as a landfill to the detriment of the Plaintiff. The HMDC and the HMDC Officers have continually sought to damage the Plaintiff by making malicious, untrue statements aimed at the Plaintiff, its principals and its intent concerning the Property.

13. Then, without Plaintiff's knowledge or approval, the HMDC, the HMDC Officers, the MetroStars and the Town of Kearny began negotiating in secret for a development project involving use of the Plaintiff's property.

14. The project, negotiated and discussed in secret and at closed meetings, involved a soccer stadium for use by the MetroStars.

15. Then, after a closed session of the Kearny Town Council the fact that the Town of Kearny had been negotiating in secret with the HMDC and the MetroStars for the Plaintiff's Property was reported on in the local newspaper. The newspaper noted that certain Councilmen had been talking with MetroStar representatives for months prior to debriefing the Council at the closed session.

16. The article confirms that the persons involved intended all along to interfere with Plaintiff's rights by reporting that a Councilman complained that the announcement to the press could

hurt the sequence of events since they were aware that the Keegan Landfill is leased from the Town by the Turco family (Plaintiff's owners) and that the state would have to condemn the Property and, after the Property was condemned and turned back to the Town, the Town would then be in "prime position" to deal with the MetroStars. The Councilman further complained in the press that since the negotiations have now been made public, the Turco family would most likely fight to keep the Property under lease.

17. The notion that governmental authorities can act in secret to conspire with private parties to deprive the Plaintiff of its property rights and then complain that publicity concerning the scheme would make it likely that the Plaintiff would defend its rights is noxious and an unacceptable interference with the Plaintiff's contracts and rights.

18. This is especially so as one of the government officials, McIntyre is both Mayor of Kearny and, reportedly, an employee of the MetroStars, thus having a conflict of interest between his official and corporate functions.

19. The HMDC, the HMDC Officials, Empire, the MetroStars and the Town of Kearny have exhibited an outrageous lack of candor, a complete disregard for, and blatant attempt to interfere with, the property and contractual rights of the Plaintiff and a willingness to improperly use their governmental authority to deprive the Plaintiff of its rights.

20. The governmental officials involved have acted outside of the scope of their authority and are liable personally for the

damage caused to the Plaintiff.

21. The purpose of a development plan that contemplates the use of the Plaintiff's property, without involving the Plaintiff, of necessity requires depriving the Plaintiff of its rights in that property - and if allowed to proceed to fruition, interference with the Plaintiff's contractual leasehold and development rights.

22. Each of the HMDC, Empire, the MetroStars and the Town of Kearny have a financial interest in the scheme to deprive Plaintiff of its property and to interfere with Plaintiff's contractual rights.

23. The financial self-interest of these Defendants is being improperly coupled with the HMDC's zoning, land use, materials handling and other regulatory powers to tortuously interfere with the Plaintiff's contractual rights and to deprive the Plaintiff of its property.

24. The actions of the HMDC, the HMDC Officers, Empire, the MetroStars, McIntyre and the town of Kearny have all interfered with the Plaintiff's contractual rights.

25. The actions of the HMDC, the HMDC Officers, the MetroStars and the town of Kearny have are injuring and continuing to injure the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC, the HMDC Officials, Empire, the MetroStars, McIntyre and the Town of Kearny for the following relief:

(A) Injunctive relief barring the Defendants from

meeting without the knowledge and consent or participation of the Plaintiff or from negotiating any development plans involving the Plaintiff's Property;

(B) Compensatory damages of at least $500,000,000;

(C) Punitive damages; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT FOURTEEN

INTERFERENCE WITH PROSPECTIVE ADVANTAGE

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Plaintiff has contractual leasehold and development rights in the Keegan Property. The contractual leasehold and development contracts were between the Plaintiff and the Town of Kearny and give the Plaintiff a prospective advantage.

3. The HMDC and the HMDC Officers had knowledge of the Plaintiff's contractual rights and prospective advantage.

4. Defendants Empire and MetroStars had knowledge of the Plaintiff's contractual rights and prospective advantage.

5. Defendant Town of Kearny had knowledge of the Plaintiff's contractual rights and prospective advantage.

6. Defendant McIntyre is Mayor of Kearny and employee of the MetroStars.

7. Despite having knowledge of the Plaintiff's rights, the HMDC and the HMDC Officers have engaged in a course of conduct to

intentionally interfere with the Plaintiff's contractual rights and prospective advantage.

8. Empire, the MetroStars and the Town of Kearny have been conspiring with the HMDC and the HMDC Officers to interfere with the Plaintiff's prospective advantage.

9. The Keegan Property is zoned for special use and commercial use, which allows for large-scale development projects. The HMDC has, at various times, confirmed that the best use of the Property was for development, not as a landfill.

10. Since acquiring its interest in the Keegan Property, the Plaintiff has sought to develop that Property. The Plaintiff's proposals have included proposals for a light industrial park for high technology companies, a master plan that included a major league baseball stadium, 3.3 million square feet of commercial office space, 800,000 square feet of retail space and 700,000 square feet to be used for a foreign trade zone and a joint venture to develop a regional shopping center on the Keegan Property having a value of approximately $500,000,000.

11. The Plaintiff was willing and capable of completing the development projects.

12. Despite the fact that the Plaintiff had proposed plans to develop the Property, and despite the fact that the HMDC confirmed that the best use of the Property is not a landfill, the HMDC has attempted to use its solid waste management authority to reopen the Property as a landfill to the detriment of the Plaintiff. The HMDC and the HMDC Officers have continually sought

to damage the Plaintiff by making malicious, untrue statements aimed at the Plaintiff, its principals and its intent concerning the Property.

13. Then, without Plaintiff's knowledge or approval, the HMDC, the HMDC Officers, the MetroStars and the Town of Kearny began negotiating in secret for a development project involving use of the Plaintiff's property.

14. The project, negotiated and discussed in secret and at closed meetings, involved a soccer stadium for use by the MetroStars.

15. Then, after a closed session of the Kearny Town Council the fact that the Town of Kearny had been negotiating in secret with the HMDC and the MetroStars for the Plaintiff's Property was reported on in the local newspaper. The newspaper noted that certain Councilmen had been talking with MetroStar representatives for months prior to debriefing the Council at the closed session.

16. The article confirms that the persons involved intended all along to interfere with Plaintiff's rights by reporting that a Councilman complained that the announcement to the press could hurt the sequence of events since they were aware that the Keegan Landfill is leased from the Town by the Turco family (Plaintiff's owners) and that the state would have to condemn the Property and, after the Property was condemned and turned back to the Town, the Town would then be in "prime position" to deal with the MetroStars. The Councilman further complained in the press that since the negotiations have now been made public, the Turco family

would most likely fight to keep the Property under lease.

17. The notion that governmental authorities can act in secret to conspire with private parties to deprive the Plaintiff of its property rights and then complain that publicity concerning the scheme would make it likely that the Plaintiff would defend its rights is noxious and an unacceptable interference with the Plaintiff's prospective advantage.

18. This is especially so as one of the government officials, McIntyre is both Mayor of Kearny and, reportedly, an employee of the MetroStars, thus having a conflict of interest between his official and corporate functions.

19. The HMDC, the HMDC Officials, Empire, the MetroStars and the Town of Kearny have exhibited an outrageous lack of candor, a complete disregard for, and blatant attempt to interfere with, the Plaintiff's prospective advantage and a willingness to improperly use their governmental authority to deprive the Plaintiff of its rights.

20. The governmental officials involved have acted outside of the scope of their authority and are liable personally for the damage caused to the Plaintiff.

21. The purpose of a development plan that contemplates the use of the Plaintiff's property, without involving the Plaintiff, of necessity requires depriving the Plaintiff of its rights in that property - and if allowed to proceed to fruition, interference with the Plaintiff's prospective advantage.

22. Each of the HMDC, Empire, the MetroStars and the Town

of Kearny have a financial interest in the scheme to deprive Plaintiff of its property and to interfere with Plaintiff's prospective advantage.

23. The financial self-interest of these Defendants is being improperly coupled with the HMDC's zoning, land use, materials handling and other regulatory powers to tortuously interfere with the Plaintiff's prospective advantage and to deprive the Plaintiff of its property.

24. The actions of the HMDC, the HMDC Officers, Empire, the MetroStars, McIntyre and the town of Kearny have all interfered with the Plaintiff's prospective advantage.

25. The actions of the HMDC, the HMDC Officers, the MetroStars and the town of Kearny have are injuring and continuing to injure the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC, the HMDC Officials, Empire, the MetroStars, McIntyre and the Town of Kearny for the following relief:

(A) Injunctive relief barring the Defendants from meeting without the knowledge and consent or participation of the Plaintiff or from negotiating any development plans involving the Plaintiff's Property;

(B) Compensatory damages of at least $500,000,000;

(C) Punitive damages; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT FIFTEEN

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. On information and belief, McIntyre has a conflict of interest through his being both an employee of the MetroStars and the Mayor of Kearny.

3. Because of this conflict, McIntyre has been conspiring with others to damage the Plaintiff and its property.

4. Under the Plaintiff's lease, the Town of Kearny is obligated to cooperate with the Plaintiff in the development of the Property, which places the Town of Kearny and its officials, including McIntyre, in a quasi-fiduciary capacity.

5. McIntyre has acted in a way directly contrary to that obligation and quasi-fiduciary capacity to the detriment of the Plaintiff.

~~6. McIntyre has conspired~~

25. The actions of McIntyre are injuring and continuing to injure the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against McIntyre for the following relief:

(A) Compensatory damages of at least $500,000,000;

(B) Punitive damages; and

(C) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT SIXTEEN

DISCRIMINATION

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Plaintiff is 80% owned by females who serve as corporate officers and who have been the persons primarily involved in the operations of the Plaintiff's business.

3. Virtually all of the HMDC's contacts with the Plaintiff have been through one or more of its (the Plaintiff's) female officers.

3. As detailed above, the Plaintiff owns other valuable property within the Meadowlands District and subject to the jurisdiction of the HMDC.

4. The HMDC and the HMDC Officials have acted improperly and in a conspiracy to prevent the Plaintiff from developing its properties and to improperly wrest control of the properties from the Plaintiff for its own benefit and the benefit of other private developers.

5. Plaintiff is one of a small number of developers who own or control large parcels of property within the meadowlands.

6. On information and belief all of the other major developers are owned or controlled by men.

7. The HMDC and the HMDC Officials have acted to advance the interest of the male owned or controlled developers, including the adoption of a Special Area Management Plan ("SAMP") that favored those developers at the expense of the Plaintiff and its

female owners and officers.

8. Under the SAMP Preferred Alternative Development Plan, which sets forth the HMDC's most favored plan for all future development in the meadowlands district, virtually all of the major development projects go to the male owned or controlled developers.

9. The HMDC and the HMDC Officials have favored the male owned or controlled developers by proposing in the SAMP, and otherwise, to zone those properties so as to permit them to build valuable developments while seeking to condemn the Plaintiff's (female owned and controlled) properties, turn them into landfills and/or to take control of those properties for the benefit of themselves and other private developers.

10. The conduct of the HMDC and the HMDC Officials was motivated by animosity and discrimination towards the Plaintiff because of its female ownership and control.

11. The conduct of the HMDC and the HMDC Officials is in violation of federal anti-discrimination statutes, including, but not limited to 15 U.S.C. § 631 (h).

12. The Plaintiff is entitled to money damages and for injunctive relief to prevent the HMDC and the HMDC Officials from continuing in their discriminatory acts and in their efforts to damage the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and the HMDC Officials for the following relief:

(A) A mandatory injunction directing the HMDC to

favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

Respectfully submitted,

RUSSELL J. PASSAMANO
& ASSOCIATES, P.C.
560 Hudson Street
Hackensack, New Jersey 07601
(201) 229-0707
Attorneys for Plaintiff

By: Russell J. Passamano
Russell J. Passamano

Dated: April 20, 1998
Hackensack, New Jersey

HUDSONDAMD

PASSAMANO & HUNT, P.C.
560 Hudson Street
Hackensack, New Jersey 07601
(201) 229-0707
Attorneys for the Plaintiff Hudson
Meadows Urban Renewal Corp.
Russell J. Passamano (RP 2240)

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp.,

Plaintiff,

v.

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION; a Body Corporate and Politic of the State of New Jersey and certain of its officers, officials and employees; particularly Anthony Scardino, Thomas Marturano and Robert Ceberio; STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION; MONSANTO COMPANY; AMERICAN ALUMINUM COMPANY; CLARKSON AND FORD COMPANY; FALKE ENGINE REBUILDING CORPORATION; FALKE CORPORATION; GAYTON LUCCHI TOOL COMPANY; G&L TOOL COMPANY; RED DEVIL, INC.; TEXACO, INC.; PRENTICE-HALL CORPORATION SYSTEM I; ACTION PLASTIC COMPANY DIVISION OF DART INDUSTRIES; BEACON DIE MOLD, INC.; CAMPTON TOOL AND DIE COMPANY; DESIGN AND MOLDING SERVICES; DIGITAL COMPUTER CONTROLS; EINSON-FREEMAN DETROY CORPORATION; FOREMOST MANUFACTURING COMPANY, INC.; CARMET COMPANY, AMCAR DIVISION; INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION/ITT MARLOW; GERRIT BEKKER AND SONS, INC.; ARROW PLASTICS CORPORATION; ROBERT MORE WASTE:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 97- 5727 (JAB)

COMPLAINT

OIL SERVICE; DEPALMA OIL COMPANY; DIAMOND HEAD OIL REFINING COMPANY, INC.; PSC RESOURCES, INC.; PHILLIPS SCREW COMPANY, INC.; AG-MET OIL SERVICE, INC.; NEWTOWN REFINING CORPORATION; REFINEMENT INTERNATIONAL COMPANY; CRESCENT CONSTRUCTION COMPANY, INC.; ELLDORER CONTRACTING COMPANY; ROBERT MAHLER, an Individual; and JOHN DOES 1 through 100, said names being fictitious;

Defendants.

Plaintiff Hudson Meadows Urban Renewal Corp. formerly known as Mimi Urban Renewal Development Corp. ("Hudson Meadows" or the "Plaintiff"), by and through its attorneys Passamano & Hunt, a Professional Corporation, by way of Complaint against the defendants, as named and detailed below (collectively the "Defendants"), alleges and says:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9607 and 9613, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 28 U.S.C. §1331, and the doctrines of ancillary and pendant jurisdiction.

2. This Court has authority to issue a declaratory judgment regarding the rights and liabilities of the parties pursuant to 28 U.S.C. §§2201 and 2202, and 42 U.S.C. §7612(g)(2).

3. Venue is proper in this District pursuant to 28 U.S.C.

§1391(b) and 42 U.S.C. §9613(b) as this action concerns real property that is located within this District in the Town of Kearny, County of Hudson, State of New Jersey, and the releases and threats of releases of hazardous substances as alleged in this Complaint occurred and are occurring within this District and all of the defendants identified herein reside and/or conduct business in this district, or did so during the times relevant to this Complaint.

THE PARTIES

4. Plaintiff Hudson Meadows is a New Jersey corporation having a place of business at 525 Riverside Avenue, Lyndhurst, New Jersey 07071.

5. Defendant Hackensack Meadowlands Development Commission (the "HMDC") is a body corporate and politic of the State of New Jersey having a place of business at 2 DeKorte Park Plaza, Lyndhurst, New Jersey 07071. The HMDC was formed in 1969. The jurisdiction of the HMDC includes zoning, land use and development and waste disposal within a defined area in the Meadowlands. All of the real property at issue in this Complaint falls within that area. Anthony Scardino, Thomas Marturano and Robert Ceberio are and were at all relevant times officers and/or employees of the HMDC (Messrs. Scardino, Marturano and Ceberio are referred to collectively as the "HMDC Officials").

6. Defendant The State of New Jersey Department of Transportation ("NJDOT") is an agency of the State of New Jersey having a place of business at 1035 Parkway Avenue, C.N. 600,

Trenton, New Jersey 08625.

7. Defendant Monsanto Company is a corporation having a place of business at 800 N. Lindbergh Boulevard, St. Louis, Missouri 63141-7843.

8. Defendant American Aluminum Company is a corporation having a place of business at 230 Sheffield Street, Mountainside, New Jersey 07092.

9. Defendant Clarkson and Ford Company is a corporation having a place of business at 30 Industrial Street West, Clifton, New Jersey 07012.

10. Defendant Falke Engine Rebuilding Corporation is a corporation having a place of business at 24 Frederick Street, Waldwick, New Jersey 07463.

11. Defendant Falke Corporation is a corporation having a place of business at 24 Frederick Street, Waldwick, New Jersey 07463.

12. Defendant Gayton Lucchi Tool Company is a corporation having a place of business at 27 Skita Avenue, Carteret, New Jersey 07008.

13. Defendant G&L Tool Company is a corporation having a place of business at 830 Elston Street, Rahway, New Jersey 07065.

14. Defendant Red Devil, Inc. is a corporation having a place of business at 2400 Vauxhall Road, Union, New Jersey 07083.

15. Defendant Texaco, Inc. is a corporation having a place of business at 2400 West Chester Avenue, White Plains, New York, 10604.

16. Defendant Prentice-Hall Corporation System I is a corporation having a place of business at 150 West State Street, Trenton, New Jersey 08608.

17. Defendant Dart Industries, as itself or through its Action Plastic Company Division, is a corporation having a place of business at 50 Furler Street, Totowa, New Jersey 07512.

18. Defendant Beacon Die Mold, Inc. is a corporation having a place of business at 57 Crooks Avenue, Clifton, New Jersey 07011.

19. Defendant Campton Tool & Die Company is a corporation having a place of business at 40 Sudney Circle, Kenilworth, New Jersey 07033.

20. Defendant Design and Molding Services is a corporation having a place of business at 25 Howard Street, Piscataway, New Jersey 08854.

21. Defendant Digital Computer Controls is a corporation having a place of business at 12 Industrial Road, Fairfield, New Jersey 07006.

22. Defendant Einson-Freeman Detroy Corporation is a corporation having a place of business at 20-10 Maple Avenue, Fair Lawn, New Jersey 07410.

23. Defendant Foremost Manufacturing Company, Inc. is a corporation having a place of business at 941 Ball Avenue, Union, New Jersey 07083.

24. Defendant Carmet Company, as itself or through its Amcar Division, is a corporation having a place of business at 160 East

Union Avenue, East Rutherford, New Jersey 07073.

25. Defendant International Telephone and Telegraph Corporation /ITT Marlow is a corporation having a place of business at 1330 Avenue of the Americas, New York, New York 10019.

26. Defendant Gerrit Bekker and Sons, Inc. is a corporation having a place of business at 228 Scoles Avenue, Clifton, New Jersey 07012.

27. Defendant Arrow Plastics Corporation is a corporation having a place of business at 83 Commerce Street, Garfield, New Jersey 07026.

28. Defendant Robert More Waste Oil Service is a corporation having a place of business at 124 Biltmore Street, North Arlington, New Jersey 07032.

29. Defendant Depalma Oil Company is a corporation having a place of business at 713 Pinewood Road, Union, New Jersey 07083.

30. Defendant Diamond Head Oil Refining Company, Inc. is a corporation that on information and belief is or was doing business within this District.

31. Defendant PSC Resources, Inc. is a corporation that on information and belief is or was doing business within this District.

32. Defendant Phillips Screw Company, Inc. is a corporation that on information and belief is or was doing business within this District.

33. Defendant Ag-Met Oil service, Inc. is a corporation that on information and belief is or was doing business within this

District.

34. Defendant NewTown Refining Corporation is a corporation that on information and belief is or was doing business within this District.

35. Defendant Refinement International Company is a corporation that on information and belief is or was doing business within this District.

36. Defendant Crescent Construction Company, Inc. is a corporation that on information and belief is or was doing business within this District.

37. Defendant Ell Dorer Contracting Company is a corporation that on information and belief is or was doing business within this District.

38. Defendant Robert Mahler is an individual that on information and belief has a residence or place of business within this District.

39. Defendants John Does 1-100 are as yet unidentified individuals, corporations, partnerships, associations, trusts, unincorporated associations and/or persons or entities of any kind that generated, disposed of or treated any hazardous substance at the Property (as defined below) and/or who arranged for the transport ("generator") and/or who transported or hauled ("transporter") a hazardous substance to the Property for treatment and/or disposal or who otherwise damaged the Plaintiff or its business interests.

40. All defendants named above are "persons" as defined in

Section 101 of CERCLA, as amended by SARA.

THE PROPERTY

41. This litigation concerns certain real property located at 1401 Harrison Avenue in the Town of Kearny, Hudson County, New Jersey. The real property is more particularly described as Block 285, Lots 3, 14 and 15 on the Tax Map of the Town of Kearny, Hudson County, New Jersey (the "Property"). Block 285, Lot 14 is a part of what was formerly known as Block 285, Lot 2.

42. The Property is bordered on the south by I-280, on the north by Harrison Avenue, on the east by the entrance ramp for I-280 and on the west by property that on information and belief is owned by Campbell Foundry Company.

43. Plaintiff is the owner in fee simple of Block 285, Lot 3.

44. Plaintiff has a leasehold interest in Block 285, Lots 14 and 15.

A. Block 285, Lot 3.

45. Block 285, Lot 3 was owned by the Town of Kearny until November 27, 1950 (the "Lot 3 Parcel").

46. At that time, the Lot 3 Parcel was sold to the defendant Diamond Head Oil Refining Company, Inc. ("Diamond Head Oil")

47. In 1973 the Lot 3 Parcel was sold to Philips Resources, Inc.

48. In 1976, the Lot 3 Parcel was sold to Ag-Met Oil Services.

49. Subsequently, Ag-Met Oil Services changed its name to

NewTown Refining.

50. Plaintiff purchased the Lot 3 Parcel in January of 1985.

51. On information and belief, up until 1978, when a Cease and Desist Order was entered, defendant Diamond Head Oil operated the Lot 3 Parcel as a site for the commercial receipt, delivery, treatment, processing and resale of materials which are "hazardous substances" within the meaning of, as used herein, and as defined by CERCLA Section 101(14), 42 U.S.C. §960(14).

52. The Lot 3 Parcel is and was a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

53. At all times relevant hereto, the defendants are persons who, at the time of disposal of any hazardous substances, owned or operated the Lot 3 Parcel facility at which hazardous substances were disposed of, arranged for disposal or treatment of hazardous substances at the Lot 3 Parcel facility at which hazardous substances were disposed of and/or transported hazardous substances to the Lot 3 facility.

B. Block 285, Lot 14.

54. Plaintiff is the holder of a long-term development and leasehold interest in Block 285, Lot 14 (documentation shows that the lot number for this parcel has been changed or that the lot has been referred to as part of lot 2 or 2A) (the "Lot 14 Parcel").

55. The Town of Kearny is the owner of that Parcel.

56. The Lot 14 Parcel is adjacent to, and lies to the west, of, the Lot 3 Parcel.

57. Plaintiff acquired its leasehold interest in the Lot 14 Parcel in 1979.

58. In 1978, prior to the time that the Plaintiff acquired its interest in the lot 14 Parcel, the HMDC approved the disposal by the DOT of hazardous materials on that Parcel.

59. The HMDC had approved, among other things, allowing the DOT to dispose on that Parcel hazardous materials including oil-contaminated materials from the construction of Route I-280.

60. On information and belief, the DOT and HMDC failed to properly oversee the disposal and failed to ensure compliance with conditions set forth for the disposal.

61. On information and belief, some of the oil-contaminated materials deposited on the Lot 14 Parcel, or other of the hazardous materials on the Lot 14 Parcel, came from the Lot 3 Parcel.

62. The Lot 14 Parcel is and was a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

63. At all times relevant hereto, the defendants are persons who, at the time of disposal of any hazardous substances, owned or operated the Lot 14 Parcel facility at which hazardous substances were disposed of, arranged for disposal or treatment of hazardous substances at the Lot 14 Parcel facility at which hazardous substances were disposed of and/or transported hazardous substances to the Lot 14 facility.

C. Block 285, Lot 15.

64. Plaintiff claims a long-term development and leasehold

interest in Block 285, Lot 15 (the "Lot 15 Parcel") through a lease entered into with the Town of Kearny, which at one time was the owner of that Parcel.

65. The DOT claims an interest in the Lot 15 Parcel through a Deed. No such Deed was mentioned to the Plaintiff at the time it acquired its leasehold interest in the Lot 15 Parcel and the existence of the Deed was not shown in the Plaintiff's title work.

66. The Lot 15 Parcel is adjacent to, and lies to the east, of, the Lot 3 Parcel.

67. Plaintiff entered the lease with the Town of Kearny for the Lot 15 Parcel in 1979.

68. On information and belief, there are hazardous materials on the Lot 15 Parcel.

69. On information and belief, some of the hazardous materials on the Lot 15 Parcel may have come from the Lot 3 Parcel and the construction of I-280 in the late 1970's.

70. The Lot 15 Parcel is and was a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

71. At all times relevant hereto, the defendants are persons who, at the time of disposal of any hazardous substances, owned or operated the Lot 15 Parcel facility at which hazardous substances were disposed of, arranged for disposal or treatment of hazardous substances at the Lot 15 Parcel facility at which hazardous substances were disposed of and/or transported hazardous substances to the Lot 15 facility.

72. CERCLA authorized the United States Environmental

Protection Agency (the "EPA") to expend monies to abate the release or threat of release of hazardous substances from a facility such as the Diamond Head Oil Site and to recover those costs from other parties pursuant to Section 107, 42 U.S.C. § 9607.

73. CERCLA authorized the EPA to expend monies on both "removal actions" (generally short-term or temporary measures as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23)) and "remedial actions" (generally long-term permanent measures as defined in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24)). The costs of both removal actions and remedial actions are referred to as "response costs" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

74. CERCLA establishes several classes of parties who are or may be liable for any response costs at a facility from which there is or has been a release or threat of release of hazardous substances including the current owner of the facility, the current operator of the facility, any person who at the time of disposal of any hazardous substances owned or operated the facility at which hazardous substances were disposed of, any person who arranged for disposal or treatment of hazardous substances at a facility at which hazardous substances were disposed of and any person who transported substances to such a facility, *inter alia*. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

75. Such persons are referred to as Potentially Responsible

Parties (herein referred to individually as a "PRP" and collectively as "PRPs").

76. Any PRP who may be liable under Section 107 of CERCLA for response costs may recover its costs for the performance of removal and remediation actions from other liable persons under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613.

77. The National Contingency Plan (the "NCP") pursuant to 33 U.S.C. § 1321(c) and Section 105 of CERCLA, 42 U.S.C. § 9605, established procedures for evaluating, ranking and placing inactive hazardous substance facilities on the National Priority List (the "NPL"). The NCP also established requirements for removal and remedial actions.

78. EPA alleged that the Defendants in this action, among others, are PRP's.

79. Plaintiff was an innocent purchaser that did not generate, transport or dispose of any hazardous wastes on the Property and was not responsible for allowing, authorizing or placing any hazardous materials on the Property and, without any admission of liability therefor, has expended money for the preparation of a remedial investigation and feasibility studies, to perform removal and remedial actions and for additional response costs as defined in 42 U.S.C. §§960 7a, 3 and 4.

80. Plaintiff will continue to incur costs to complete the remedial investigation and feasibility study and to continue removal and remedial actions and for additional costs or response as defined herein.

81. The costs described in the preceding paragraph were, are and will be incurred by the Plaintiff as necessary costs of response consistent with the NCP.

82. The Defendants are each PRPs as generators and/or transporters and/or haulers to the Property of various chemical substances, including hazardous substances, as defined in CERCLA, 42 U.S.C. §§ 1901, *et seq.*, as amended by Pub. L. 99-499(SARA).

COUNT ONE

CERCLA 107 CONTRIBUTION
BY GENERATORS AND TRANSPORTERS

1. Plaintiff repeats and realleges each and every allegation in the foregoing Paragraphs as if set forth at length herein.

2. Pursuant to Section 107(a)(3) and (4) of CERCLA, 42 U.S.C. §§ 9607(a)(3,4), any person who owns and arranges for the transport ("generator") or who transports or hauls ("transporter") a hazardous substance to a facility at which hazardous substances were disposed of, are liable for necessary costs of response to a release or threat of release of hazardous substances at or from a facility, which costs are incurred by any other person consistent with the NCP.

3. Defendants, as generators and transporters of hazardous waste to the Property at times when hazardous wastes were disposed of there, are each strictly liable jointly, severally and in the alternative, to the Plaintiffs for all necessary costs of response incurred and to be incurred by said Plaintiff consistent with the NCP and/or as a result of any action filed against it.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to be strictly liable to Plaintiff for all response costs, together with interest thereon, regarding the Property, past, present and future;

(B) Ordering that Defendants, jointly, severally and in the alternative, to immediately reimburse Plaintiff for response costs thus far incurred by Plaintiff, consistent with the NCP, together with lawful interest thereon, where applicable;

(C) Ordering that Defendants, jointly, severally and in the alternative are liable to pay Plaintiff immediately upon Plaintiff's request, all future response costs, consistent with the NCP together with lawful interest thereon, where applicable;

(D) Ordering Defendants to each pay Plaintiff its costs of suit, including reasonable attorneys fees and disbursements; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT TWO

CERCLA CONTRIBUTION
BY GENERATORS AND TRANSPORTERS

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Count as if set forth at length herein.

2. Pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), any person may seek contribution from any other person who is liable under Section 107(a) of CERCLA, 42 U.S.C.

§ 9607(a).

3. Plaintiff has a right of contribution against each and every generator and transporter to recover costs of response related to the Property, incurred and to be incurred by each Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to be liable to Plaintiff pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), for contribution to the necessary costs of response incurred and to be incurred by Plaintiff regarding the Property, together with lawful interest thereon;

(B) Ordering that Defendants, jointly, severally and in the alternative, to immediately pay to Plaintiff their share of contribution for response costs thus far incurred by Plaintiff, together with lawful interest thereon;

(C) Ordering Defendants to pay Plaintiff its costs of suit, including reasonable attorneys' fees and disbursements; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT THREE

CONTRIBUTION AND INDEMNITY

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Each and every Defendant is strictly liable, jointly,

severally and in the alternative, to Plaintiff for any and all costs incurred and to be incurred by Plaintiff related to the Property, including but not limited to remedial, removal and other response costs and are, thus, liable over to said parties for indemnity and/or contribution under federal and applicable state law for all costs incurred and to be incurred by Plaintiff related to the Property.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to indemnify Plaintiff and/or contribute to Plaintiff for all removal, remedial and other response costs which Plaintiffs have incurred and will continue to incur related to the Property, together with lawful interest thereon;

(B) Ordering Defendants, jointly, severally and in the alternative, to pay to Plaintiff all removal, remedial and other response costs already incurred or, alternatively, contribute to such costs incurred by Plaintiffs in an amount to be determined by this Court, together, together with lawful interest thereon;

(C) Declaring Defendants strictly liable, jointly, severally and in the alternative to pay Plaintiff for all future removal, remedial and other response costs which may be incurred by Plaintiff in full or, alternatively, in accordance with contribution to be determined by this Court, together with the lawful Ordering Defendants to pay Plaintiff its costs of suit, including reasonable attorneys' fees and disbursements; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT FOUR

NEGLIGENCE

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. Defendants owed Plaintiff a duty of care to handle, transport and/or ship any and all hazardous substances generated by them to the Property in suitable and acceptable condition for treatment, storage and/or disposal so as to prevent any harm or injury to public health and welfare and to the environment.

3. Defendants negligently caused or permitted hazardous substances to be released by their negligent handling of same so as to allow the release or threat of release of hazardous substances as the Property. Defendants knew or should have known that the manner in which they conducted these activities in relation to the Property could forseeably cause the release of hazardous substances.

4. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered and will continue to suffer damages, including but not limited to, the expenditure of removal, remedial and other response costs at and from the Property.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants to be liable to Plaintiff for

negligence;

(B) Ordering Defendants, jointly, severally and in the alternative, to immediately reimburse Plaintiff for all removal, remedial and other response costs related to the Property already incurred or to be incurred, together with lawful interest thereon;

(C) Declaring that Defendants shall pay to Plaintiff immediately upon Plaintiff's request, all removal, remedial and other response costs and damages related to the Property which may, in the future, be incurred and/or suffered by Plaintiff as the result of Defendants' negligence, including and together with lawful interest thereon;

(D) Ordering Defendants to pay each Plaintiff its costs of suit, including reasonable attorney's fees and disbursements; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT FIVE

JOINT TORTFEASORS ACT

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. The New Jersey Joint Tortfeasors Act, N.J.S.A. 2A:53A-1 *et seq.*, (the NJJTA") provides for the right of contribution among joint tortfeasors.

3. Notwithstanding the fact that Plaintiff disclaims and denies any liability for any and all damages related to the

Property, Plaintiff is entitled to and hereby requests contribution from Defendants pursuant to the NJJTA, to the extent that any judgment, damages, costs or payments are recovered against or incurred by them.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring Defendants liable to Plaintiff pursuant to the terms and strictures of the New Jersey Joint Tortfeasors Act, for any judgment, damages, costs or payments assesses against the Plaintiff herein which damages, costs or payments are related to any of Defendants' activities relating to the Property, together with lawful interest thereon;

(B) Ordering Defendants to pay Plaintiff its costs of suit, including reasonable attorney's fees and disbursements; and

(C) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT SIX

NEW JERSEY SPILL COMPENSATION AND CONTROL ACT

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. The New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, *et seq.* (the "Spill Act"), prohibits the unauthorized discharge of petroleum products and other hazardous substances within the State of New Jersey.

3. "Hazardous substances" are defined under the Spill Act,

N.J.S.A. 58:10-23.11b(k) to include petroleum products as well as the list of hazardous substances adopted by the EPA pursuant to Section 311 of the Federal Water Pollution Control Act of 1972, Pub. L. 92-500, as amended by the Clean Water Act of 1977, Pub. L. 95-217, 33 U.S.C. §§ 1251, *et seq.* and the list of hazardous substances adopted by the EPA pursuant to Section 101 of CERCLA, Pub. L. 96-510, 42 U.S.C. §§ 9601, *et seq.*

4. Pursuant to N.J.S.A. 58:10-23.11g, any person who has discharged a hazardous substances, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly or severally, without regard for fault, for all clean-up and removal costs no matter by whom incurred.

5. On January 10, 1992, the Spill Act was amended to provide a cause of action to any private party who remediates and removes a discharge of a hazardous substances against all other discharges and persons in any way responsible for such discharge, N.J.S.A. 58:10-23.11f(a)(2).

6. Defendants as generators and transporters of hazardous substances to the Property are persons "in any way responsible" for said hazardous substances which have been discharged within the State of New Jersey.

7. Defendants are "persons" as defined under the Spill Act, N.J.S.A. 58:d10-23.11.

8. As a result of said discharges of hazardous substances at the Property, Defendants are strictly liable to Plaintiff, jointly, severally and/or in the alternative for the cleanup and

removal of all discharge of hazardous substances at and from the Property.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against Defendants jointly, severally and/or in the alternative:

(A) Declaring that Plaintiff is entitled to contribution and indemnification from Defendants for costs and damages as a direct and proximate result of Defendants' release and discharge of hazardous substances at the subject property, together with lawful interest thereon;

(B) Declaring that Defendants are liable to Plaintiff for all injuries and damages related to the Property ans suffered by Plaintiff as a proximate result of Defendants' failure to notify the appropriate government agency of said releases and discharges required by law to be reported, together with lawful interest thereon;

(C) Ordering Defendants to Pay Plaintiffs all costs and damages related to the Property which Plaintiff has or will suffer as the result of Defendants' release and discharge of hazardous substances, together with lawful interest thereon;

(D) Ordering Defendants to pay Plaintiff's costs for this action including reasonable attorneys' fees and disbursements;

(E) Punitive damages; and

(F) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT SEVEN

BAD FAITH CONDUCT BY THE HMDC AND THE HMDC OFFICIALS

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. In 1986, the Plaintiff submitted to the HMDC a development plan for the Property.

3. The plan contemplated a mixed use development on the Property consisting of office space a hotel and retail space.

4. In 1993, the Plaintiff submitted to the HMDC a complete application that met all HMDC criteria for final preliminary approval.

5. Between 1986 and 1993, the HMDC held meetings and had communications with the Plaintiff concerning the proposed development, and requested that the Plaintiff provide to the HMDC studies and reports dealing with, among other things, engineering, transportation and site characteristics. Plaintiff's information showed that the Property was a developable site.

6. Up until that time, the HMDC did not set forth any requirement for a clean-up of the Property as a condition precedent to considering the Plaintiff's request for approval of the development plan. Since, as detailed above, the HMDC had allowed the disposal of at least the oil contaminated soil on the Lot 14 Parcel and had failed to properly oversee the disposal of that oil contaminated soil or to ensure compliance with conditions set forth for the disposal, the HMDC was well aware of the condition of the Property during all of the time that it held

meetings and communicated with the Plaintiff concerning the development.

7. In preparing and presenting its proposals, the Plaintiff had anticipated that any clean-up that might be required would be performed as part of building an approved development. This would provide the benefit of any needed clean up within the context of an economically feasible development plan.

8. Plaintiff invested significant amounts of money and management time into creating the development plan meeting with and making presentations to the HMDC and responding to the HMDC's requests for additional information and studies.

9. HMDC then informed the Plaintiff that no further action would be taken concerning consideration for approval of the Plaintiff's development plan until after the Plaintiff had completed a clean-up of the Property. The HMDC also brought up issues as to title to the Lot 15 Parcel. Title issues would not, however, have blocked the Plaintiff's efforts. If those issues could not have been resolved through adjudication or negotiation, the Plaintiff would have modified its development plan to use only the Lot 3 and Lot 14 Parcels.

10. Given the costs involved in a clean-up, the imposition of such a requirement as a condition precedent had a more serious effect. Through the new condition, the HMDC was seeking to put the Plaintiff in the position of having to make the financial commitment for a clean up without knowing whether or not it would be allowed to enjoy the economic benefits of the development.

11. The HMDC and the HMDC Officials were aware that the condition precedent would impair the Plaintiff's ability to develop and enjoy the economic benefits of the Property.

12. On information and belief, the HMDC has not imposed on other developers the same restriction and condition precedent that have been imposed on the Plaintiff.

13. Subsequently, the Plaintiff was given reason to believe that the HMDC Officials acting as themselves and through the HMDC, had imposed different and more stringent conditions on the Plaintiff.

14. These acts were taken by the HMDC and the HMDC Officials in bad faith and as a way of improperly preventing the Plaintiff from developing the Property and from enjoying the economic benefits of the Property.

15. The acts of the HMDC and the HMDC Officials were a part of a larger scheme to prevent the Plaintiff from developing any of its properties within the Meadowlands area.

16. The successful development of the Property would have enhanced the Plaintiff's credibility and given it experience and a track record of success in developing projects in the Meadowlands that would benefit the Plaintiff in developing its other Meadowlands properties.

17. The HMDC and the HMDC Officials acted and are continuing to act intentionally and in bad faith in an effort to damage the Plaintiff and its business.

18. The conduct of the HMDC and the HMDC Officials has

damaged and is continuing to damage the Plaintiff.

19. The Plaintiff is entitled to money damages and for injunctive relief to prevent the HMDC and the HMDC Officials from continuing their bad faith conduct.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the following relief:

(A) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT EIGHT

ESTOPPEL

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. In 1986, the Plaintiff submitted to the HMDC a development plan for the Property. The plan contemplated a mixed use development on the Property consisting of office space, a

hotel and retail space.

3. Between 1986 and 1993, the HMDC held meetings and had communications with the Plaintiff concerning the proposed development, and requested that the Plaintiff provide to the HMDC studies and reports dealing with, among other things, engineering, transportation and site characteristics. Plaintiff's information showed that the Property was a developable site.

4. In reasonable reliance on the statements and representations of the HMDC, Plaintiff invested significant amounts of money and management time into the development plan, obtaining the additional information requested by the HMDC and commissioning the additional studies requested by the HMDC.

5. In 1993, the Plaintiff submitted to the HMDC a complete application that met all HMDC criteria for final preliminary approval.

6. Up until that time, the HMDC did not set forth any requirement for a clean-up of the Property as a condition precedent to considering the Plaintiff's request for approval of the development plan. Since, as detailed above, the HMDC had allowed the disposal of at least the oil contaminated soil on the Lot 14 Parcel, the HMDC was well aware of the condition of the Property during all of the time that it held meetings and communicated with the Plaintiff concerning the development.

7. In preparing and presenting its proposals, the Plaintiff had anticipated that any clean-up that might be required would be performed as part of building an approved development. This would

provide the benefit of any needed clean up within the context of an economically feasible development plan.

8. On information and belief, the HMDC has not imposed on other developers the same restriction and condition precedent that have been imposed on the Plaintiff.

9. The HMDC's change in position to impose the different and more stringent condition on the Plaintiff damaged the Plaintiff and prevented the Plaintiff from developing the Property and from enjoying the economic benefits of the Property.

10. The HMDC's acts were a part of a larger scheme by the HMDC and the HMDC Officials to prevent the Plaintiff from developing any of its properties within the Meadowlands area.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and its officers and the HMDC Officials for the following relief:

(A) Barring the HMDC from imposing a clean up as a condition precedent to considering Plaintiff's development plans;

(B) A mandatory injunction directing the HMDC to favorably rule on the Plaintiff's development application;

(C) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(D) Compensatory damages;

(E) Punitive damages; and

(F) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT NINE

CONSPIRACY BY THE HMDC OFFICIALS

1. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs and Counts as if set forth at length herein.

2. The Plaintiff owns other valuable property within the Meadowlands District and subject to the jurisdiction of the HMDC, including property known as the Keegan landfill.

3. The Plaintiff has submitted development plans concerning the Keegan property, which plans involve several million square feet of commercial and mixed use space.

4. This would be one of the largest developments in the Meadowlands.

5. In addition, Hudson Meadows has control over 350 (approximate) acres of wetlands that have valuable wetlands mitigation rights

6. The HMDC and the HMDC Officials have acted over a period of years to improperly use zoning and solid waste authority and other means to attempt to condemn and take control of these valuable properties, through various guises including claiming a public use as a solid materials handling complex (landfill).

7. When those efforts were thwarted by, among other things, public opposition and changes in solid waste laws, the HMDC continued to improperly attempt to wrest control of the

Plaintiff's meadowlands properties.

8. The HMDC Officials have acted in concert in an intentional scheme to deprive Plaintiff of its property rights and to take control of the Plaintiff's property.

9. As a part of that larger conspiracy and scheme, the HMDC Officials conspired to prevent the Plaintiff from developing the Diamond Head Property, as detailed above.

10. The HMDC Officials acted in concert to damage the Plaintiff and its business.

11. The conduct of the HMDC Officials has damaged and is continuing to damage the Plaintiff.

12. The Plaintiff is entitled to money damages and for injunctive relief to prevent the HMDC Officials from continuing in their efforts to damage the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC Officials for the following relief:

(A) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(B) Compensatory damages;

(C) Punitive damages; and

(D) For such other and further relief as this Court may deem just, equitable and appropriate.

COUNT TEN

female owners and officers.

8. Under the SAMP Preferred Alternative Development Plan, which sets forth the HMDC's most favored plan for all future development in the meadowlands district, virtually all of the major development projects go to the male owned or controlled developers.

9. The HMDC and the HMDC Officials have favored the male owned or controlled developers by proposing in the SAMP, and otherwise, to zone those properties so as to permit them to build valuable developments while seeking to condemn the Plaintiff's (female owned and controlled) properties, turn them into landfills and/or to take control of those properties for the benefit of themselves and other private developers.

10. The conduct of the HMDC and the HMDC Officials was motivated by animosity and discrimination towards the Plaintiff because of its female ownership and control.

11. The conduct of the HMDC and the HMDC Officials is in violation of federal anti-discrimination statutes, including, but not limited to 15 U.S.C. § 631 (h).

12. The Plaintiff is entitled to money damages and for injunctive relief to prevent the HMDC and the HMDC Officials from continuing in their discriminatory acts and in their efforts to damage the Plaintiff.

WHEREFORE, Plaintiff Hudson Meadows demands judgment against the HMDC and the HMDC Officials for the following relief:

(A) A mandatory injunction directing the HMDC to

favorably rule on the Plaintiff's development application;

(B) An Order barring any of the HMDC Officials from participating in, commenting on or in any way interfering with the approval of Plaintiff's development application and from otherwise hindering the Plaintiff concerning the application or subsequent development of the Property;

(C) Compensatory damages;

(D) Punitive damages; and

(E) For such other and further relief as this Court may deem just, equitable and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

Respectfully submitted,

PASSAMANO & HUNT, P.C.
560 Hudson Street
Hackensack, New Jersey 07601
(201) 229-0707
Attorneys for Plaintiff

By: _____
Russell J. Passamano

Dated: November 17, 1997
Hackensack, New Jersey

HUDSOND

Ralph J. Lamparello, Esq. (RL-9339)
Thomas R. Kobin, Esq. (TK-5296)
CHASAN, LEYNER, BARISO & LAMPARELLO
A Professional Corporation
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094
(201) 348-6000
Our File No.: 12170-5447
Attorneys for Defendant Town of Kearny

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp., Plaintiff, vs. HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION; a Body Corporate and Politic of the State of New Jersey and certain of its officers, officials and employees; particularly Anthony Scardino, Thomas Marturano and Robert Ceberio; STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION; MONSANTO COMPANY; AMERICAN ALUMINUM COMPANY; CLARKSON AND FORD CO; FALKE ENGINE REBUILDING CORPORATION; FALKE CORPORATION; GAYTON LUCCHI TOOL COMPANY; G&L TOOL COMPANY; RED DEVIL, INC.; TEXACO, INC.; PRENTICE-HALL CORPORATION SYSTEM I; ACTION PLASTIC COMPANY DIVISION OF DART INDUSTRIES; BEACON DIE MOLD, INC.; CAMPTON TOOL AND DIE	:	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No. 97-5727 (JAG) ANSWER TO AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, CROSSCLAIMS, AND COUNTERCLAIMS

COMPANY; DESIGN AND :
MOLDING SERVICES; DIGITAL :
COMPUTER CONTROLS; EINSON-:
FREEMAN DETROY :
CORPORATION; FOREMOST :
MANUFACTURING COMPANY, :
INC.; CARMET COMPANY, :
AMCAR DIVISION; :
INTERNATIONAL TELEPHONE :
AND TELEGRAPH :
CORPORATION/ITT MARLOW; :
GERRIT BEKKER AND SONS, :
INC.; ARROW PLASTICS :
CORPORATION; ROBERT MORE :
WASTE OIL SERVICE; DEPALMA :
OIL COMPANY; DIAMOND HEAD :
OIL REFINING COMPANY, INC.; :
PSC RESOURCES, INC.; PHILLIPS :
SCREW COMPANY, INC.; AG-MET:
OIL SERVICE, INC.; NEWTOWN :
REFINING CORPORATION; :
REFINEMENT INTERNATIONAL :
COMPANY; CRESCENT :
CONSTRUCTION COMPANY, :
INC.; ELLDORER CONTRACTING :
COMPANY; ROBERT MAHLER, an :
Individual; EMPIRE SOCCER :
CLUB; METROSTARS; the TOWN :
OF KEARNY; PETER McINTYRE; :
and JOHN DOES 1 through 100, said :
names being fictitious; :
:
Defendants. :

ANSWER TO AMENDED COMPLAINT

Defendant, Town of Kearny ("Kearny"), having its principal place of business located at 402 Kearny Avenue, Kearny, Hudson County, New Jersey 07032, by way of Answer to plaintiff's Amended Complaint, says:

JURISDICTION AND VENUE

1. Because ¶ 1 sets forth only legal conclusions, Kearny neither admits nor denies same.

2. Because ¶ 2 sets forth only legal conclusions, Kearny neither admits nor denies same.

3. Kearny admits that real property at issue in the Amended Complaint is located in Kearny, New Jersey, that Kearny conducts business in New Jersey and that venue in the United State District Court for the District of New Jersey is proper. Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in ¶ 3.

PARTIES

4 - 40. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶¶ 4 through 40.

41. Kearny admits the averments set forth in ¶ 41.

42. Kearny admits the averments set forth in ¶ 42.

43. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 43.

44. Because ¶ 44 sets forth only legal conclusions, Kearny neither admits nor denies same.

THE DIAMOND HEAD PROPERTY

45. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 45.

46. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 46.

47. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 47.

48. Kearny denies the averments set forth in ¶ 48.

A. Block 285, Lot 3.

49 - 54. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶¶ 49 through 54.

55. The averments in ¶ 55 regarding "hazardous substances" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") constitute plaintiff's conclusions of law. Accordingly, it is inappropriate to either admit or deny same. Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in ¶ 55.

56. Because ¶ 56 sets forth only legal conclusions, Kearny neither admits nor denies same.

57. Kearny denies the averments set forth in ¶ 57 with respect to Kearny. Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in ¶ 57.

B. Block 285, Lot 14.

58. Kearny denies the averments set forth in ¶ 58.

59. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 59 regarding whether Kearny is the owner of Block 285, Lot 14. Kearny admits that the tax records for Kearny reflect that Kearny is the record owner of Block 285, Lot 14.

60. Kearny admits the averment set forth in ¶ 60.

61. Kearny denies the averment set forth in ¶ 61.

62 - 65. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶¶ 62 through 65.

66. Because ¶ 66 sets forth only legal conclusions, Kearny neither admits nor denies same.

67. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 67.

C. Block 285, Lot 15.

68. Kearny denies the averments in ¶ 68 regarding plaintiff having any leasehold rights to Block 285, Lot 15. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 68 regarding whether Kearny was at one time the owner of Block 285, Lot 15. Kearny admits that the tax records for the Town of Kearny reflect that the Town is the record owner of Block 285, Lot 15.

69. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 69.

70. Kearny admits the averments set forth in ¶ 70.

71. Kearny denies the averment set forth in ¶ 71.

72. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 72.

73. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 73.

74. Because ¶ 74 sets forth only legal conclusions, Kearny neither admits nor denies same.

75. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶ 75.

76 - 81. Because ¶¶ 76 through 81 set forth only legal conclusions, Kearny neither admits nor denies same.

82 - 85. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in ¶¶ 82 through 85.

86. Because ¶ 86 sets forth only legal conclusions, Kearny neither admits nor denies same.

COUNT ONE

(CERCLA 107 Contribution By Generators and Transporters)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2. Because Count One, ¶ 2 sets forth only legal conclusions, Kearny neither admits nor denies same.

3. Kearny denies the averments set forth in Count One, ¶ 3. To the extend that ¶ 3 sets forth legal conclusions, Kearny neither admits nor denies same.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT TWO

(CERCLA Contribution By Generators and Transporters)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2. Because Count Two, ¶ 2 sets forth only legal conclusions, Kearny neither admits nor denies same.

3. Kearny denies the averments set forth in Count Two, ¶ 3. To the extent that ¶ 3 sets forth only legal conclusions, Kearny neither admits nor denies same.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT THREE

(Contribution and Indemnity)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2. Kearny denies the averments set forth in Count Three, ¶ 2. To the extent that ¶ 2 sets forth only legal conclusions, Kearny neither admits nor denies same.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT FOUR

(Negligence)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2 - 4. Kearny denies the averments set forth in Count Four, ¶¶ 2 through 4. To the extent that ¶¶ 2 through 4 set forth only legal conclusions, Kearny neither admits nor denies same.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT FIVE

(Joint Tortfeasors Act)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2. Because Count Five, ¶ 2 sets forth only legal conclusions, Kearny neither admits nor denies same.

3. Kearny denies the averments set forth in Count Five, ¶ 3. To the extent that ¶ 3 sets forth only legal conclusions, Kearny neither admits nor denies same.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT SIX

(New Jersey Spill Compensation and Control Act)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2 - 5. Because Count Six, ¶¶ 2 through 5 set forth only legal conclusions, Kearny neither admits nor denies same.

6. Kearny denies the averments set forth in Count Six, ¶ 6. To the extent that ¶ 6 sets forth only legal conclusions, Kearny neither admits nor denies same.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT NINE

(Bad Faith Conduct by the HMDC (Keegan Property))

The Keegan Property

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2 - 6. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Nine, ¶¶ 2 through 6.

7. Kearny denies the averments set forth in Count Nine, ¶ 7.

8 - 18. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Nine, ¶¶ 8 through 18.

A. **Bad faith by the HMDC in interfering with the plaintiff's contractual rights and attempting to improperly condemn the plaintiff's property and gain control of plaintiff's wetlands areas for the benefit of other private parties.**

19-40. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Nine, ¶¶ 19 through 40. To the extent that ¶¶ 19 through 40 set forth only legal conclusions, Kearny neither admits nor denies same.

41. Kearny admits that in 1992, Kearny passed a resolution opposing the opening of the Keegan Landfill. Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in Count Nine, ¶ 41.

42-45. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Nine, ¶¶ 42 through 45

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT TEN

(Conflict of Interest)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2. Kearny denies the averments set forth in Count Ten, ¶ 2 regarding applications pending before the HMDC. Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in Count Ten, ¶ 2.

3 - 9. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Ten, ¶¶ 3 through 9.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

COUNT ELEVEN

(Improper Taking)

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2 - 13. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Eleven, ¶¶ 2 through 13.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

6. Kearny admits that defendant McIntyre is the Mayor of Kearny. Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in Count Thirteen, ¶ 6.

7. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Thirteen, ¶ 7.

8. Kearny denies the averments set forth in Count Thirteen, ¶ 8, as they relate to this defendant. Kearny is without knowledge or information sufficient to form a belief as to the remaining averments set forth in Count Thirteen, ¶ 8.

9 - 10. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Thirteen, ¶¶ 9 and 10.

11. Kearny denies the averments set forth in Count Thirteen, ¶ 11.

12. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Thirteen, ¶ 12.

13. Kearny denies the truth if those averments which relate to the Kearny, and Kearny is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in Count Thirteen, ¶ 13.

14. Kearny admits that representatives of the Metrostars preliminarily discussed the possibility of constructing a soccer stadium in the Town of Kearny with the Kearny Town Council. Kearny denies that these discussions constitute negotiations.

15. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Thirteen, ¶ 15.

16. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Thirteen, ¶ 16.

17. Kearny denies the averments set forth in Count Thirteen, ¶ 17. To the extent that ¶ 17 sets forth legal conclusions, Kearny neither admits nor denies same.

18. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Thirteen, ¶ 18.

19. Kearny denies the averments set forth in Count Thirteen, ¶ 19, as they relate to this defendant. Kearny is without knowledge or information sufficient to form a belief as to the remaining averments set forth in Count Thirteen, ¶ 19.

20. Kearny denies the averments set forth in Count Thirteen, ¶ 20, as they relate to this defendant. Kearny is without knowledge or information sufficient to form a belief as to the remaining averments set forth in Count Thirteen, ¶ 20.

21. Kearny denies the averments set forth in Count Thirteen, ¶ 21.

22. Kearny admits that it has a financial interest in the properties at issue in this litigation. Kearny denies the remaining averments set forth in Count Thirteen, ¶ 22, as they relate to this defendant. Kearny is without knowledge or information sufficient to form a belief as to the remaining averments set forth in Count Thirteen, ¶ 22.

23 - 25. Kearny denies the averments set forth in Count Thirteen, ¶ 23 through 25, as they relate to this defendant. Kearny is without knowledge or information sufficient to form a belief as to the remaining averments set forth in Count Thirteen, ¶¶ 23 through 25.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

12. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Fourteen, ¶ 12.

13. Kearny denies the truth of those averments which relate to the Town of Kearny and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in Count Fourteen, ¶ 13.

14. Kearny admits that representatives of the Metrostars preliminarily discussed the possibility of constructing a soccer stadium in the Town of Kearny with the Kearny Town Council. Kearny denies that these discussions constitute negotiations.

15. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Fourteen, ¶ 15.

16. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Fourteen, ¶ 16.

17. Kearny denies the averments set forth in Count Fourteen, ¶ 17. To the extent that ¶ 17 sets forth legal conclusions, Kearny neither admits nor denies same.

18. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Fourteen, ¶ 18.

19. Kearny denies the averments set forth in Count Fourteen, ¶ 19.

20. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Fourteen, ¶ 20.

21. Kearny denies the averments set forth in Count Fourteen, ¶ 21. To the extent that ¶ 21 sets forth legal conclusions, Kearny neither admits nor denies same.

22. Kearny admits that it has a financial interest in the properties at issue in this litigation. Kearny denies the remaining averments set forth in Count Fourteen, ¶ 22 as they

COUNT SIXTEEN

1. Kearny reasserts its responses to the prior paragraphs of plaintiff's Amended Complaint as if set forth at length herein.

2 - 10. Kearny is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Count Sixteen, ¶¶ 2 through 10.

11 - 12. The averments in these paragraphs constitute the plaintiff's conclusions of law or assertions regarding the legal interpretation of the alleged actions of the defendants, which conclusions or interpretations are at issue in this proceeding. Accordingly, it is inappropriate to either admit or deny them.

WHEREFORE, Kearny demands judgment, dismissing plaintiff's Amended Complaint, together with attorney's fees and costs of suit.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint is barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint is barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint is barred by the equitable defense of fraud.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint is barred by the equitable defense of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims set forth in the Amended Complaint for joint and several liability are barred because the acts or omissions of the plaintiff and other defendants were separate and distinct from the acts or omissions of Kearny, and the harm allegedly caused by the acts and omissions of the plaintiff, other defendants and Kearny is separate and divisible.

FIFTEENTH AFFIRMATIVE DEFENSE

Kearny had neither actual nor constructive knowledge of the conditions described by plaintiff within sufficient time prior to the alleged damages so as to have taken measures to protect against same, and is thus, immune from liability pursuant to *N.J.S.A.* 59:4-2 and -3.

SIXTEENTH AFFIRMATIVE DEFENSE

The Amended Complaint is barred by the doctrine of res judicata.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Amended Complaint is barred by the doctrine of collateral estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Amended Complaint is barred by the entire controversy doctrine.

NINETEENTH AFFIRMATIVE DEFENSE

With respect to Counts 1 through 7, any rights plaintiff may have obtained to the properties by way of purchase or lease were obtained subsequent to the activities alleged in the Amended Complaint and plaintiff had knowledge or should have known about the alleged activities. Accordingly, plaintiff's Amended Complaint is barred. By was of example, in Section 2h, p. 9 of a Master Lease and Option Agreement executed by plaintiff and Kearny, plaintiff affirmatively acknowledges that more than 93 acres encompassed in the Lease were used for dumping.

Refinement International Company; Crescent Construction Company, Inc.; Elldorer Contracting Company; Robert Mahler (collectively "environmental co-defendants"); and says:

COUNT ONE

(Contribution Under 42 *U.S.C.* § 9613(f))

1. All environmental co-defendants named above are persons who are liable under 42 *U.S.C.* §§ 9606 & 9607(a) (CERCLA §§ 106 & 107(a)).

2. In the event that Kearny is found liable in this proceeding, Kearny is entitled to contribution under 42 *U.S.C.* § 9613(f)(1) (CERCLA § 113(f)(1)) from the environmental co-defendants for response costs that Kearny has incurred or will incur in connection with the property at issue.

WHEREFORE, Kearny demands judgment against the environmental co-defendants, pursuant to 42 *U.S.C.* § 9613(f)(1) (CERCLA § 113(f)(1), for damages, interest, costs, counsel fees and such other relief as the Court shall deem just and equitable.

COUNT TWO

(Contribution - State Law)

3. Kearny repeats and reasserts the prior paragraphs of its environment Crossclaim as if set forth at length herein.

4. *N.J.S.A.* 2A:53A-1 *et seq.*, *N.J.S.A.* 2A:15-5.3, and the New Jersey Spill Compensation and Control Act ("Spill Act"), *N.J.S.A.* 58:10-23.11(f)(a)(2), grant a right of contribution among joint tortfeasors.

5. If Kearny is found liable, in whole or in part, either directly or indirectly, for damages to the property at issue, then Kearny is entitled to statutory based contribution for

14. If Kearny is found liable, in whole or in part, either directly or indirectly, for damages to plaintiff for tortious interference, then Kearny is entitled to contribution for damages incurred or to be incurred as a result of the acts, conduct or omissions of any other party who is also found liable for damages to plaintiff.

15. As a result of their acts, conduct or omissions, the state law co-defendants are liable, in whole or in part, for the damages to the plaintiff and are, therefore, liable for contribution to Kearny for all damages incurred or to be incurred as a result of those damages to plaintiff.

WHEREFORE, Kearny demands judgment against the state law co-defendants pursuant to *N.J.S.A.* 2A:53A-1 *et seq.*, and *N.J.S.A.* 2A:15-5.3 for contribution for damages, interest, costs, counsel fees and such other relief as the Court shall deem just and equitable.

COUNT SIX

(Indemnification)

16. Kearny repeats and reasserts the prior paragraphs of its state law Crossclaim as if set forth at length herein.

17. If Kearny is liable to plaintiff, as alleged in the Complaint, which Kearny denies, that liability is passive, secondary and vicarious, whereas the liability of all other state law co-defendants is active, primary and direct.

18. If plaintiff recovers from Kearny, any damages or any obligation to pay damages in the future, then Kearny is entitled to be indemnified by the state law co-defendants for all such damages.

WHEREFORE, Kearny demands judgment against the state law co-defendants for indemnification for damages, interest, costs, counsel fees and such other relief as the Court shall deem just and equitable.

COUNTERCLAIMS

Defendant Kearny, having its primary place of business at 402 Kearny Avenue, Kearny, New Jersey 07032, by way of Counterclaim, says:

Jurisdiction and Nature of the Counterclaims

1. Plaintiff asserts that this Court has jurisdiction over this action pursuant to 42 *U.S.C.* §§ 9607 and 9613 (CERCLA §§ 107 & 113); (ii) federal question jurisdiction, 28 *U.S.C.* § 1331; and (iii) the doctrines of ancillary and pendent jurisdiction.

2. Plaintiff appears to allege, *inter alia*, that pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), Kearny is jointly and severally liable to plaintiff for past and future costs that plaintiff has incurred or will incur to clean the property at issue.

3. Plaintiff also alleges that Kearny is liable to plaintiff for causes of action arising out of a purported lease between Kearny and plaintiff.

4. Each of the Counterclaims is a compulsory Counterclaim under Fed. R. Civ. P. 13(a), arising out of the transaction or event that is the subject matter of plaintiff's Amended Complaint and does not require for its adjudication the presence of third parties over whom this Court cannot acquire jurisdiction. In addition, this Court has jurisdiction over each Counterclaim pursuant to the supplemental jurisdiction provided for under 28 *U.S.C.* § 1367(a).

5. The facts which give rise to these Counterclaims are so related to the facts and claims set forth in the Amended Complaint that they form part of the same case or controversy.

14. Plaintiff alleges that the disposal of hazardous substances at the property at issue resulted in a "release" or "threatened release," as the terms are defined in 42 *U.S.C.* § 9601(22) (CERCLA § 101(22)).

15. Plaintiff is liable or potentially liable pursuant to 42 *U.S.C.* § 9607 (a)(1) and/or (a)(2) (CERCLA § 107(a)(1) and/or (a)(2)) for response costs and damages, incurred or to be incurred at the property at issue.

16. Pursuant to 42 *U.S.C.* § 9613(f)(1) (CERCLA § 113(f)(1)), Kearny is entitled to contribution from plaintiff for all amounts in excess of Kearny's fair and equitable share of the response costs and damages plaintiff has incurred or may incur at the property at issue.

WHEREFORE, Kearny demands judgment against plaintiff as follows:

(a) Without admitting any liability, a declaration, pursuant to 28 *U.S.C.* §§ 2201 & 2202, 42 *U.S.C.* § 9613(f)(1) (CERCLA § 113(f)(1)), *N.J.S.A.* 58:10-23.11f(a)(2), *N.J.S.A.* 2A:53A-1 *et seq.*, and *N.J.S.A.* 2A:15-5.1 & 5.3, that Kearny is entitled to contribution, diminution and/or indemnification from plaintiff for all costs and damages for which Kearny is adjudged liable in connection with the property at issue; and

(b) An order granting Kearny such other relief as the Court may deem equitable and just.

COUNT TWO

(Contribution Pursuant to the New Jersey Spill Compensation and Control Act)

17. Kearny repeats and reasserts the prior paragraphs as if set forth at length herein.

18. The New Jersey Spill Compensation and Control Act ("Spill Act") provides, in pertinent part at *N.J.S.A.* 58:10-23.11g(c), "Any person who has discharged a hazardous

substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred."

19. Plaintiff is a "person" as defined in the Spill Act, *N.J.S.A.* 58:10-23.11b.

20. Plaintiff alleges that hazardous substances, as defined in the Spill Act, *N.J.S.A.* 58:10-23.11b, were disposed of at the property at issue.

21. Plaintiff alleges that disposal of hazardous substances at the property at issue constitute or resulted in a "discharge," as that term is defined in the Spill Act, *N.J.S.A.* 58:10-23.11b.

22. In the event that Kearny is held liable, pursuant to the Spill Act, *N.J.S.A.* 58:10-23.11f, Kearny is entitled to contribution from plaintiff for all amounts in excess of Kearny's fair and equitable share of the response costs and damages plaintiff has incurred or will incur at the property at issue.

WHEREFORE, Kearny demands judgment against plaintiff as follows:

(a) Without admitting any liability, a declaration, pursuant to 28 *U.S.C.* §§ 2201 & 2202, 42 *U.S.C.* § 9613(f)(1) (CERCLA § 113(f)(1)), *N.J.S.A.* 58:10-23.11f(a)(2), *N.J.S.A.* 2A:53A-1 *et seq.*, and *N.J.S.A.* 2A:15-5.1 & 5.3, that Kearny is entitled to contribution, diminution and/or indemnification from plaintiff for all costs and damages for which Kearny is adjudged liable in connection with the properties at issue; and

(b) An order granting Kearny such other relief as the Court may deem equitable and just.

(b) An order granting Kearny such other relief as the Court may deem equitable and just.

COUNT FOUR

(Common Law Indemnification)

28. Kearny repeats and reasserts the prior paragraphs as if set forth at length herein.

29. Without admitting any liability, if it is determined that Kearny is liable to the plaintiff for any damages and/or losses alleged within plaintiff's Amended Complaint, which allegations are specifically denied, then Kearny's liability for the acts or omissions causing the alleged damages is secondary, passive and vicarious only, whereas the liability of plaintiff is primary, active and direct.

30. As a result of the above, any damages for which Kearny may be liable are chargeable to plaintiff, and Kearny is entitled to indemnification from plaintiff.

WHEREFORE, Kearny demands judgment against plaintiff as follows:

(a) Without admitting any liability, a declaration, pursuant to 28 *U.S.C.* §§ 2201 & 2202, 42 *U.S.C.* § 9613(f)(1) (CERCLA § 113(f)(1)), *N.J.S.A.* 58:10-23.11f(a)(2), *N.J.S.A.* 2A:53A-1 *et seq.*, and *N.J.S.A.* 2A:15-5.1 & 5.3, that Kearny is entitled to contribution, diminution and/or indemnification from plaintiff for all costs and damages for which Kearny is adjudged liable in connection with the property at issue; and

(b) An order granting Kearny such other relief as the Court may deem equitable and just.

COUNT FIVE

(Lease is Void *Ab Initio*)

Background – Purported Lease Issues

31. On August 8, 1979, Kearny passed a Resolution which purported to authorize the execution of a Master Leasing and Option Agreement ("Master Lease") and Lease Agreement ("Lease") between Kearny and Mimi Development Corp. ("Mimi"), predecessor in interest to plaintiff – Hudson Meadows Urban Renewal Corp. ("Hudson Meadows") (referred to collectively as "plaintiff").

32. The Master Lease and Lease required plaintiff to use its best efforts to redevelop certain properties ("Leased Property") to generate employment and tax ratables for Kearny. (Master Lease, Section 6; Lease, Section 6)

33. The Master Lease and Lease were the product of a scheme of bribes made by plaintiff's representatives to Kearny Councilmembers.

34. On July 31, 1979, Kearny approved a certain Redevelopment Plan.

35. The Leased Property is more extensive than the properties declared, or to be declared, blighted in this Redevelopment Plan.

36. The Lease is for a term of 75 years from the Commencement Date, which is defined as the later of 6 months following the execution of the Lease or the date of receipt of the necessary permits for the construction of improvements on the Leased Property. (Lease Section 4; Master Lease, Section 4)

37. During the nineteen years since the Master Lease and Lease were executed, plaintiff has failed to acquire the necessary permits for construction of improvements on the Leased Property, as contemplated by the Redevelopment Plan and the Master Lease and Lease.

part, to have the Lease and Master Lease declared void and illegal based on the newly discovered bribes related to their inception.

45. By Resolution dated May 14, 1986, Kearny purportedly authorized settlement of the 1984 Action.

46. The Stipulation of Dismissal for the 1984 Action provided, *inter alia*: (1) Hudson Meadows would pay Kearny $500,000 ($200,000 for RICO claims and $300,000 as additional rent under the Lease) as well as $50,000 in attorney's fees; (2) Hudson Meadows would construct a 50,000 square foot commercial-retail building on its "owned or leased land" in the Town of Kearny, within 2 years of receipt of building permits and approvals from the Hackensack Meadowlands Development Commission ("HMDC"); (3) Kearny would recognize and support the validity of the Lease, as modified by the Settlement; (4) neither Jerry Turco nor Dolores Turco would participate as stockholders, officers or employees of Hudson Meadows; and (5) Hudson Meadows would use its best efforts to attract the development of a major league baseball stadium to the Leased Property.

47. On August 25, 1995, Hudson Meadows filed a Complaint, captioned *Hudson Meadows Urban Renewal Development Corp. v. Municipal Sanitary Landfill Authority*, et al., Superior Court, Hudson County, Chancery Division, Docket No. C-68-95 (the "1995 Action"), in which Kearny was a named defendant. The Complaint sought an accounting, access to public records, and contribution for costs of remediation of a landfill on the Leased Property.

48. The Complaint in the 1995 Action referenced several of the properties involved in the present lawsuit.

49. The 1995 Action was dismissed based on the Court's finding of unclean hands by Hudson Meadows.

than is declared "or to be declared" blighted by the Redevelopment Plan (Block 285, Lot 19; Block 284, Lot 29; Block 285, Lots 14 & 17; Block 286, Lots 4 & 47).

57. The Master Lease and Lease are void *ab initio* based on the failure to comply with statutory requirements.

58. No subsequent event, including the Settlement Agreement from the 1984 Action between Kearny and Hudson Meadows, has the legal effect of ratifying the void Master Lease and Lease Agreement.

WHEREFORE, Kearny demands judgment against plaintiff as follows:

(a) Declaring the Lease to be void and of no legal effect and unenforceable;

(b) Ordering Hudson Meadows to immediately vacate all properties that were allegedly part of the Lease;

(c) Ordering Hudson Meadows to restore said property;

(d) Compensatory damages; and

(c) Attorney's fees and costs of suit.

COUNT SEVEN

(Rule Against Perpetuities)

59. Kearny repeats and reasserts the prior paragraphs as if set forth at length herein.

60. Plaintiff's rights under the Master Lease and Lease do not vest or terminate within 21 years after the death of an individual alive on the date the Master Lease and Lease were executed or 90 years after execution.

61. The Lease and Master Lease violate the New Jersey Rule Against Perpetuities, *N.J.S.A.* 46:2F-1 and are, therefore, invalid.

(d) As set forth in Section 20 of the Master Lease, plaintiff has failed, at its own expense, to promptly comply or cause compliance with all laws, ordinances and regulations of governmental units, whether or not these were within the contemplation of the parties at the time of execution of the Lease.

Breach of the Lease

(a) Plaintiff has failed to pay the required rent, including the failure to pay $4,000 per year in initial rent, and $1,500 per acre per year in operating rent as set forth in Section 5 of the Lease.

(b) In the 19 years since the Lease arose, plaintiff has failed to use its best efforts to develop the Leased Property, as set forth in Section 6 of the Lease and in accordance with the mutual intent of the parties.

(c) As set forth in Section 19 of the Lease, plaintiff has failed, at its own expense, to promptly comply or cause compliance with all laws, ordinances and regulations of governmental units, whether or not these were within the contemplation of the parties at the time of execution of the Lease.

Breach of the 1984 Action Settlement Agreement

(a) Plaintiff has failed to construct a 50,000 square foot commercial-retail building, as required by ¶ 4 of the Settlement Agreement.

(b) Plaintiff has failed to use its best efforts to attract the development of a major league baseball stadium to the Town of Kearny, as required by ¶ 7 of the Settlement Agreement.

69. Kearny has provided plaintiff with notice of these defaults, as required by Sections 13 and 14 of the Master Lease and Lease.

70. Pursuant to Sections 13 and 14 of the Master Lease and Lease, in the event that these defaults are not cured within 90 days, or their cure is not diligently pursued, the Town has the right to terminate the Master Lease and Lease and reenter and take possession of the leased property.

71. Kearny is not in default under the terms of the Master Lease, Lease or Settlement Agreement.

72. Kearny has suffered damages due to Hudson Meadows' breach of the Master Lease, Lease and Settlement Agreement, including lost tax revenues and lost rent.

WHEREFORE, Kearny demands judgment against plaintiff as follows:

(a) Terminating the Master Lease and Lease;

(b) Ordering plaintiff to immediately vacate all properties that were allegedly part of the Lease;

(c) Payment of all rent and option payments as required under the Master Lease and Lease from 1979 to the present, together with interest.

(d) Attorney's fees and costs of suit; and

(e) Such other relief as the Court shall deem just and equitable.

COUNT ELEVEN

(Mutual Mistake)

73. Kearny repeats and reasserts the prior paragraphs as if set forth at length herein.

74. Kearny and plaintiff intended that the Master Lease and Lease would terminate in the event plaintiff was unable to acquire the necessary development permits by a date certain.

75. Plaintiff has failed to acquire any development permits after more than 19 years.

WHEREFORE, Kearny demands judgment against plaintiff as follows:

(a) Terminating the Master Lease and Lease;

(b) Ordering plaintiff to immediately vacate all properties that were allegedly part of the Lease;

(c) Payment of all rent and option payments as required under the Master Lease and Lease from 1979 to the present, together with interest.

(d) Attorney's fees and costs of suit; and

(e) Such other relief as the Court shall deem just and equitable.

COUNT TWELVE

(Contractual Indemnity)

76. Kearny repeats and reasserts the prior paragraphs as if set forth at length herein.

77. In the event the Court were to hold that there is an enforceable Master Lease and Lease between Kearny and plaintiff, the Master Lease and Lease contain provisions whereby plaintiff has agreed to indemnify and save harmless Kearny from any and all loss, cost, expense or liability. The indemnity provisions extend to all legal costs and charges Kearny incurs in obtaining possession from plaintiff after default under the Master Lease or Lease.

78. Kearny has incurred, and may incur loses, costs, expenses and liability.

WHEREFORE, Kearny demands judgment against plaintiff for all losses, costs, expenses and liability arising out of any claims asserted in this action.

ANSWER TO CROSSCLAIMS

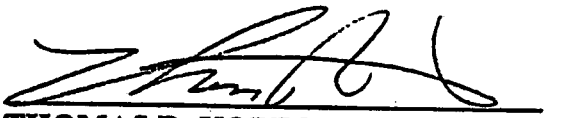
With respect to any Crossclaims against Kearny, Kearny denies the allegations of any and all Crossclaims.

RESERVATION OF RIGHTS

Kearny hereby reserves the right to amend its Answer, Affirmative Defenses, Crossclaim and Counterclaims as discovery in this proceeding continues and the allegations set

forth in the Amended Complaint are clarified, including but not limited to any environmental issues concerning the Keegan Property.

CHASAN, LEYNER, BARISO &
LAMPARELLO, P.C.
Attorneys for Defendant Town of Kearny

By: 
THOMAS R. KOBIN, ESQ. (TK 5296)

Dated: August 17, 1998

Ralph J. Lamparello, Esq. (RL-9339)
Thomas R. Kobin, Esq. (TK-5296)
CHASAN, LEYNER, BARISO & LAMPARELLO
A Professional Corporation
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094
(201) 348-6000
Our File No.: 12170-5447
Attorneys for Defendant Town of Kearny

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp.,	:	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY
Plaintiff,	:	Civil Action No. 97-5727 (JAG)
vs.	:	
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION; a Body Corporate and Politic of the State of New Jersey and certain of its officers, officials and employees; particularly Anthony Scardino, Thomas Marturano and Robert Ceberio; STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION; MONSANTO COMPANY; AMERICAN ALUMINUM COMPANY; CLARKSON AND FORD CO; FALKE ENGINE REBUILDING CORPORATION; FALKE CORPORATION; GAYTON LUCCHI TOOL COMPANY; G&L TOOL COMPANY; RED DEVIL, INC.; TEXACO, INC.; PRENTICE-HALL CORPORATION SYSTEM I; ACTION PLASTIC COMPANY DIVISION OF DART INDUSTRIES; BEACON DIE MOLD, INC.; CAMPTON TOOL AND DIE	:	PROOF OF MAILING

COMPANY; DESIGN AND MOLDING SERVICES; DIGITAL COMPUTER CONTROLS; EINSON-FREEMAN DETROY CORPORATION; FOREMOST MANUFACTURING COMPANY, INC.; CARMET COMPANY, AMCAR DIVISION; INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION/ITT MARLOW; GERRIT BEKKER AND SONS, INC.; ARROW PLASTICS CORPORATION; ROBERT MORE WASTE OIL SERVICE; DEPALMA OIL COMPANY; DIAMOND HEAD OIL REFINING COMPANY, INC.; PSC RESOURCES, INC.; PHILLIPS SCREW COMPANY, INC.; AG-MET OIL SERVICE, INC.; NEWTOWN REFINING CORPORATION; REFINEMENT INTERNATIONAL COMPANY; CRESCENT CONSTRUCTION COMPANY, INC.; ELLDORER CONTRACTING COMPANY; ROBERT MAHLER, an Individual; EMPIRE SOCCER CLUB; METROSTARS; the TOWN OF KEARNY; PETER McINTYRE; and JOHN DOES 1 through 100, said names being fictitious;

Defendants.

THOMAS R. KOBIN, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and an associate of the law firm of Chasan, Leyner, Bariso & Lamparello, P.C., attorneys for defendant, Town of Kearny in the above-captioned case.

2. On August 17, 1998, I forwarded a copy of an Answer, Affirmative Defenses, Crossclaims and Counterclaims in the above-captioned case by Lawyer's Service to all counsel on the attached service list.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

THOMAS R. KOBIN (TK 5296)

Dated: August 17, 1998

MARGULIES, WIND, HERRINGTON & KNOPF
A Professional Corporation
15 Exchange Place - Suite 510
Jersey City, New Jersey 07302-3912
(201) 333-0400
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp., Plaintiff, v. HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION; a Body Corporate and Politic of the State of New Jersey and certain of its officers, officials and employees; particularly Anthony Scardino, Thomas Marturano and Robert Ceberio; et als. Defendants.	Civ. No. 97-5727 (JAG) Hon. Joseph A. Greenaway, Jr. **ANSWER BY PLAINTIFF TO COUNTERCLAIM OF DEFENDANT TOWN OF KEARNY**

Plaintiff, Hudson Meadows Urban Renewal Corp., by way of Answer to the Counterclaim filed herein by defendant, Town of Kearny, states as follows:

JURISDICTION AND NATURE OF THE COUNTERCLAIMS

1. The allegations of Paragraphs 1 through 5 of the counterclaim either characterize the allegations of the amended complaint, which speaks for itself, or state legal conclusions as to for which no answer is required.

COUNT ONE

2. Plaintiff repeats and reasserts its responses to the allegations of Paragraphs 1 through 5 as same are restated in Paragraph 6 of the counterclaim.

3. The allegations of Paragraphs 7 through 9, inclusive, state legal conclusions as to which no answer is required.

4. The allegations of Paragraphs 10 characterize the contents of the amended complaint, which speaks for itself.

5. The allegations of Paragraphs 11 through 13 state legal conclusions as to which no answer is required.

6. The allegations of Paragraphs 15 and 16 are denied.

COUNT TWO

7. Plaintiff repeats and restates its responses to Paragraphs 1 through 16 of the counterclaim as same are restated in Paragraph 17 thereof.

8. The allegations of Paragraphs 18 and 19 state legal conclusions as to which no answer is required.

9. The allegations of Paragraphs 20 and 21 seek to characterize the contents of the amended complaint, which speaks for itself.

10. The allegations of Paragraph 22 are denied.

COUNT THREE

11. Plaintiff repeats and restates its responses to Paragraphs 1 through 22 as same are restated in paragraph 23 of the counterclaim.

12. The allegations of Paragraphs 24 and 25 state legal conclusions as to which no answer is required.

13. The allegations of Paragraphs 26 and 27 are denied.

COUNT FOUR

14. Plaintiff repeats and restates its responses to Paragraphs 1 through 27 of the counterclaim as same are restated in Paragraph 28 thereof.

15. The allegations in Paragraphs 29 and 30 are denied.

COUNT FIVE

16. Plaintiff repeats and restates its responses to Paragraphs 1 through 30 of the

counterclaim, as same are restated in Paragraph 31 thereof.

17. Plaintiff neither admits nor denies the allegations of Paragraph 32 as same seeks to characterize the provisions of the lease between the parties, which instrument speaks for itself.

18. Plaintiff denies the allegations of Paragraph 33.

19. Plaintiff lacks sufficient information at this time to admit or deny the allegations of Paragraph 34.

20. Plaintiff lacks sufficient information at this time to admit or deny the allegations of Paragraph 35.

21. Plaintiff admits the allegations of Paragraph 36 to the extent that they allege a term of 75 years, but neither admits nor denies the balance of the allegations which characterize incompletely the terms of the lease document, which speaks for itself.

22. Plaintiff admits the allegations of Paragraph 37 to the extent that they allege that plaintiff has not yet acquired the necessary permits for construction of improvements, but denies the inference that plaintiff has violated the Master Lease and Lease.

23. Plaintiff neither admits nor denies the allegations of Paragraphs 38 through 41,

inclusive, of the counterclaim, as such allegations seek to characterize terms of the Master Lease and Lease incompletely, and plaintiff asserts further that those documents speak for themselves.

24. Plaintiff admits not having made any rental payments, but denies any inference that such fact constituted a breach of the Master Lease or Lease.

25. The allegations of Paragraph 43 seek to characterize the provisions of the Master Lease and Lease, which documents speak for themselves and plaintiff therefore declines to admit or deny these allegations.

LITIGATION HISTORY

26. The plaintiff admits the existence of the cause of action referred to in Paragraph 44, but neither admits nor denies the characterization by counterclaimant of the relief sought therein and asserts that the complaint in that action speaks for itself.

27. Plaintiff lacks sufficient information at this time to admit or deny the allegations of Paragraph 45.

28. Plaintiff declines to admit or deny the allegations of Paragraph 46 as same seek to characterize incompletely the terms of a stipulation of dismissal which document speaks for itself.

29. Plaintiff admits the existence of the cause of action set forth in Paragraph 47, but neither admits nor denies defendant's characterization of the relief sought in that action, as the complaint therein speaks for itself.

30. Plaintiff admits the allegations of Paragraph 48.

31. Plaintiff neither admits nor denies the allegations of Paragraph 49 which seek to characterize the legal basis for a ruling that is referred to therein, but admits that the action was dismissed.

32. Plaintiff denies the allegations of Paragraphs 50 and 51.

COUNT SIX

33. Plaintiff repeats and restates its responses to Paragraphs 1 through 51 of the counterclaim as same are restated in Paragraph 52 thereof.

34. The allegations of Paragraphs 53 and 54 state legal conclusions as to which no answer is required.

35. Plaintiff lacks sufficient information to admit or deny the allegations of Paragraph 55 with respect to the existence or non-existence of a resolution. As to the balance of the allegations therein, plaintiff asserts that the Master Lease and Lease speak for themselves.

36. Plaintiff neither admits nor denies the allegations of Paragraph 56 which seek to characterize the contents of the Lease between the parties and asserts instead that the Lease speaks for itself.

37. Plaintiff denies the allegations of Paragraphs 57 and 58.

COUNT SEVEN

38. Plaintiff repeats and restates its responses to the allegations of Paragraphs 1 through 58 of the counterclaim as same are restated in Paragraph 59 thereof.

39. The allegations of Paragraph 60 state legal conclusions as to which no answer is required.

40. Plaintiff denies the allegations of Paragraph 61.

COUNT EIGHT

41. Plaintiff repeats and restates its responses to the allegations of Paragraphs 1 through 61, as same are restated in Paragraph 62 of the Counterclaim.

42. The allegations of Paragraph 63 are denied.

COUNT NINE

43. Plaintiff repeats and restates its responses to Paragraph 1 through 63 of the Counterclaim as same are restated in Paragraph 64 thereof.

44. Plaintiff denies the allegations of Paragraphs 65 and 66.

COUNT TEN

45. Plaintiff repeats and restates its responses to Paragraphs 1 through 66 of the Counterclaim, as same are restated in Paragraph 67 thereof.

46. Plaintiff denies the allegations of Paragraph 68 of the Counterclaim to the extent that they suggest any breach by plaintiff in the terms of the Master Lease and Lease between the parties.

47. Plaintiff denies the allegations of Paragraph 69 to the extent that they suggest a default by plaintiff under the Master Lease and Lease and further denies that effective notice thereof was given by counterclaimant.

48. Plaintiff neither admits or denies the allegations of Paragraph 70 which seeks to characterize an in complete fashion terms of the Master Lease and Lease which instruments speak for themselves.

49. Plaintiff denies the allegations of Paragraphs 71 and 72.

COUNT ELEVEN

50. Plaintiff repeats and restates its responses to the allegations of Paragraphs 1 through 72 of the counterclaim as same are restated in Paragraph 73 thereof.

51. Plaintiff denies the allegations of Paragraph 74.

52. Plaintiff denies the allegations of Paragraph 75 to the extent that they state that plaintiff has failed to acquire a development permit, but denies the intimation that such failure constituted a breach under the Master Lease and Lease.

COUNT TWELVE

53. Plaintiff repeats and restates its responses to the allegations of Paragraphs 1 through 75 of the counterclaim as same are restated in Paragraph 76 thereof.

54. Plaintiff neither admits nor denies the allegations of Paragraph 77 which seek to characterize in incomplete fashion the terms of the Master Lease and Lease which instruments speak for themselves.

55. Plaintiff lacks sufficient information to admit or deny the allegations of Paragraph 78, but denies any liability to counterclaimant.

FIRST AFFIRMATIVE DEFENSE

The counterclaim fails to set forth a cause of action against plaintiff.

SECOND AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

Any breach or failure of performance alleged under the Master Lease and Lease between the parties was created or caused in whole or in part by the conduct of defendant/counterclaimant, The Town of Kearny.

SEVENTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred by virtue of the breach by counterclaimant of

its obligation of good faith and fair dealing under the Master Lease and Lease between the parties.

EIGHTH AFFIRMATIVE DEFENSE

The counterclaim defendant is excused from performance under the Lease due to the material breach of its terms by defendant/counterclaimant, The Town of Kearny.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's duty to perform under the Master Lease and Lease between the parties is excused due to the failure of conditions precedent to such performance.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged non-performance is excused by virtue of counterclaimant's conduct which has rendered performance impossible.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant is not liable under the Master Lease and Lease between the parties due to the failure of consideration.

TWELFTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of *res judicata*.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of ratification.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of accord and satisfaction.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of judicial estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of collateral estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred under the doctrine of claim preclusion.

WHEREFORE, plaintiff/counterclaim defendant demands judgment in the within action as follows:

a. Dismissing the counterclaim;

b. Awarding counterclaim defendant costs of suit; and

c. Awarding such other and further relief as the Court deems equitable and just.

DATED: October 6, 1998

MARGULIES, WIND, HERRINGTON & KNOPF
A Professional Corporation
Attorneys for Plaintiff

BY: _____
FRANK E. CATALINA

MARGULIES, WIND, HERRINGTON & KNOPF
A Professional Corporation
15 Exchange Place - Suite 510
Jersey City, New Jersey 07302-3912
(201) 333-0400
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp., Plaintiff, v. HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION; a Body Corporate and Politic of the State of New Jersey and certain of its officers, officials and employees; particularly Anthony Scardino, Thomas Marturano and Robert Ceberio; et als. Defendants.	Civ. No. 97-5727 (JAG) Hon. Joseph A. Greenaway, Jr. **PROOF OF SERVICE**

Patricia Morrison, by way of certification says:

1. I am a secretary employed by Margulies, Wind, Herrington & Knopf, A Professional Corporation.

2. On October 7, 1998, I served by facsimile and regular mail to Ralph L. Lamparello, Esq. a true copy of Answer by Plaintiff to Counterclaim of Defendant, Town of Kearny to:

SEE ATTACHED SERVICE LIST

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I will be subject to punishment.

DATED: October 7, 1998

Patricia Morrison

PATRICIA MORRISON

SERVICE LIST

HUDSON MEADOWS URBAN RENEWAL CORP. v. HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
CIVIL ACTION NO.: 97-5727(JWB)

Frank E. Catalina, Esq.
MARGULIES, WIND, HERRINGTON & KNOPF, P.C.
15 Exchange Place - Suite 510
Jersey City, NJ 07302-3912
Attorneys for Plaintiff Hudson Meadows Urban Renewal Corp.

John M. Agnello, Esq.
Carella, Byrne, Bain, Gilfillan, Cecci, Stewart & Olstein
6 Becker Farm Road
Roseland, New Jersey 07068-1739
Attorneys for Defendant ITT Industries, Inc.

Louis M. DeStefano, Esq.
Carpenter, Bennett & Morrissey
Three Gateway Center
Newark, New Jersey 07101
Attorneys for Defendant Texaco, Inc.

James E. Tyrell, Jr., Esq.
Latham & Watkins
One Newark Center
Newark, New Jersey 07101
Attorneys for Defendant Monsanto Company

James Stewart, Esq.
Lowenstein Sandler, P.C.
65 Livingston Avenue
Roseland, New Jersey 07068
Attorneys for Defendant American Aluminum Company ("AMALCO")

Steven M. Berlin, Esq.
Giordano, Halleran & Ciesia
125 Half Mile Road
P.O. Box 190
Middletown, New Jersey 07748
Attorneys for Empire Soccer Club

Ralph J. Lamparello, Esq.
Chasan, Leyner, Bariso & Lamparello, P.C.
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094
Attorneys for the Town of Kearny

Frank C. Welzer, Esq.
Zevnik, Horton, Guibord, McGovern, Palmer & Fognani
745 Fifth Avenue, 25th Floor
New York, New York 10151
Attorneys for ITT Industries, Inc.

Valerie W. Haynes, Esq.
Deputy Attorney General
Department of Law and Public Safety
Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
Attorneys for Hackensack Meadowlands Development Commissionl and its Officers and Directors

Peter J. Herzberg, Esq.
Thomas A. Waldman, Esq.
Pitney, Hardin, Kipp & Szuch
P.O. Box 1945
Morristown, New Jersey 07962-1945

Mark Turner Holmes, Esq.
Deputy Attorney General
Department of Law and Public Safety
Hughes Justice Complex
P.O. Box 114
Trenton, New Jersey 08625-0114
Attorneys for New Jersey Department of Transportation

Paul J. McCurrie, Esq.
McCurrie, McCurrie & McCurrie
680 Kearny Avenue
Kearny, New Jersey 07032
Attorneys for Mayor McIntyre

Stephen J. McCurrie, Esq. (SM3539)
McCURRIE McCURRIE & McCURRIE
680 Kearny Avenue
Kearny, New Jersey 07032
(201) 997-2100
Attorneys for Defendant, Peter McIntyre

HUDSON MEADOWS URBAN RENEWAL CORP., a corporation of the State of New Jersey, f/k/a/ Mimi Urban Renewal Development Corp.,

Plaintiff,

v.

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION, a body corporate and politic of the State of New Jersey and certain of its officers, officials and employees, particularly, Anthony Scardino, Thomas Marturano and Robert Ceberio, STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION, MONSANTO COMPANY, AMERICAN ALUMINUM COMPANY, CLARKSON AND FORD COMPANY, FALKE ENGINE REBUILDING CORPORATION, FALKE CORPORATION, GAYTON LUCCHI TOOL COMPANY, G & L TOOL COMPANY, RED DEVIL, INC., TEXACO, INC., PRENTICE-HALL CORPORATION SYSTEM I, ACTION PLASTIC COMPANY DIVISION OF DART INDUSTRIES, BEACON DIE MOLD, INC., CAMPTON TOOL AND DIE COMPANY, DESIGN AND MOLDING SERVICES, DIGITAL COMPUTER CONTROLS, EISON-FREEMAN DETROY CORPORATION, FOREMOST MANUFACTURING COMPANY, INC., CARMET COMPANY, AMCAR DIVISION, INTERNATIONAL TELEPHONE AND TELEGRAPH

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil Action Docket No.: 97-5727

Hon. Joseph A. Greenaway, Jr., U.S.D.J.

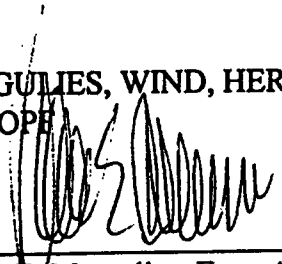
STIPULATION OF DISMISSAL

CORPORATION/ITT MARLOW, GERRIT BEKKER AND SONS, INC., ARROW PLASTICS CORPORATION, ROBERT MORE WASTE OIL SERVICE, DEPALMA OIL COMPANY, DIAMOND HEAD OIL REFINING COMPANY, INC., PSC RESOURCES, INC., PHILLIPS SCREW COMPANY, INC., AG-MET OIL SERVICE, INC., NEWTOWN REFINING CORPORATION, REFINEMENT INTERNATIONAL COMPANY, CRESCENT CONSTRUCTION COMPANY, INC., ELLDORER CONTRACTING COMPANY, ROBERT MAHLER, an individual, EMPIRE SOCCER CLUB, METROSTARS, the TOWN OF KEARNY, PETER McINTYRE, and JOHN DOES 1 through 100, said names being fictitious,

Defendants.

It is stipulated and agreed by the attorneys for the respective parties that the above captioned action, including all cross-claims, be dismissed as against the defendant, Peter McIntyre, without prejudice and without costs to any party.

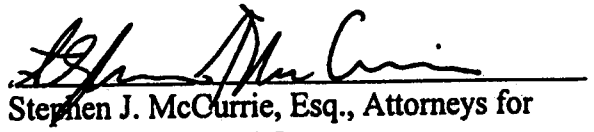
MARGULIES, WIND, HERRINGTON & KNOPF



Robert E. Margulies, Esq., Attorneys for Plaintiff, Hudson Meadows Urban Renewal Corp.

9/30/98
Date

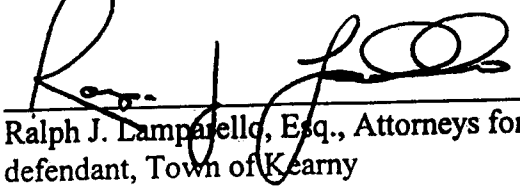
McCURRIE McCURRIE & McCURRIE



Stephen J. McCurrie, Esq., Attorneys for Defendant, Peter McIntyre

9/14/98
Date

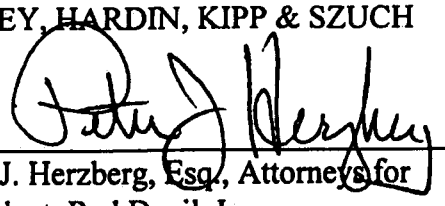
CHASAN, LEYNER, BARISO &
LAMPARELLO



Ralph J. Lamparello, Esq., Attorneys for
defendant, Town of Kearny

10/5/98
Date

PITNEY, HARDIN, KIPP & SZUCH



Peter J. Herzberg, Esq., Attorneys for defendant, Red Devil, Inc.

10/5/94

Date

LATHAM & WATKINS

James E. Tyrell, Jr., Esq., Attorneys for
Monsanto Company

10/5/98
Date

ATTORNEY GENRAL,
STATE OF NEW JERSEY

Mark T. Holmes

Mark Turner Holmes, Esq., Attorneys for
defendant, N.J. Department of Transportation

10/8/98

Date

ATTORNEY GENERAL,
STATE OF NEW JERSEY

Valerie W. Haynes

Valerie W. Haynes, Esq., Attorneys for defendant, Hackensack Meadowlands Development Commission &
Anthony Scardino, Robert Liberio & Thomas Marturano

10/19/98
Date

LOWENSTEIN SANDLER, P.C.

James Stewart

James Stewart, Esq., Attorneys for defendant,
American Aluminum Company

10/9/98
Date

GIORDANO, HALLERAN & CIESIA

By: _____

~~Steven M. Berlin, Esq.~~, Attorneys for defendant, Empire Soccer Club

CRAIG S. VIRGIL, ESQ.

10/6/99

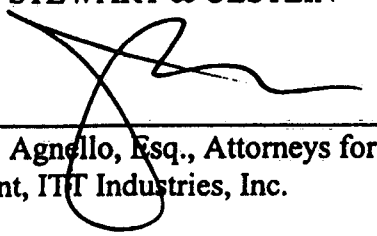
Date

CARPETNER, BENNETT & MORRISSEY

Louis M. DeStefano, Esq., Attorneys for defendant, Texaco, Inc.

Date 10/26/88

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCI, STEWART & OLSTEIN



John M. Agnello, Esq., Attorneys for
defendant, ITT Industries, Inc.

10/16/98
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HUDSON MEADOWS URBAN RENEWAL CORP.,	:	
Plaintiff,	:	
v.	:	Civ. No. 97-5727 (JAG)
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION, ET AL.,	:	**ORDER**
Defendants.	:	

JOSEPH A. GREENAWAY, JR., District Judge

This matter having come before the Court on the motion to dismiss for lack of subject matter jurisdiction of Peter Verniero, Attorney General of New Jersey, by Mark Turner Holmes, Deputy Attorney General, on behalf of defendant New Jersey Department of Transportation ("Defendant NJDOT"); and it appearing that a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) shall be granted "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter." Fed. R. Civ. P. 12(h)(3); and it further appearing that "absent a clear waiver by a state of its eleventh-amendment immunity or a proper congressional abrogation of that immunity, a federal court lacks jurisdiction to hear claims brought by an individual against a state." Snyder v. Baumecker, 708 F. Supp. 1451, 1455 (1989) (citing Pennhurst State School and Hosp. v. Halderman, 465 U.S. 89, 99 (1984)); see also Seminole Tribe of Florida v. Florida, 517 U.S. 44, 54 (1996); Spicer v. Hilton, 618 F.2d 232, 235-36 (3d Cir. 1980) (stating that although the language of the Eleventh Amendment explicitly covers only suits commenced against a state by citizens of another state or country, it has been extended to encompass actions instituted in federal court against a state by its own citizens); and

it appearing that Plaintiff alleges violations of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., the Joint Tortfeasors Contribution Law, N.J. Stat. Ann. § 2A:53A-1 et seq., and the New Jersey Spill Compensation and Control Act, N.J. Stat. Ann. § 58:10-23.11 et seq.; and it further appearing that Plaintiff concedes that Congress has not abrogated the states' Eleventh Amendment immunity in CERCLA actions. See Seminole, 517 U.S. at 65-66 (holding that Congress could not abrogate the states' sovereign immunity through an action taken under the Interstate Commerce Clause), overruling Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989); and it further appearing that although New Jersey has waived its immunity from suit in its own courts pursuant to certain statutes, including the Contractual Liability Act, N.J. Stat. Ann. § 59:13-2 et seq., the Tort Claims Act, N.J. Stat. Ann. § 59:1-2 et seq., and the Transportation Act, N.J. Stat. Ann. § 27:1A-5.2 et seq., a federal court will find that a State has waived its immunity from suit in federal court "only where stated by the most express language or by such overwhelming implication from the text as (will) leave no room for any other reasonable construction." Edelman v. Jordan, 415 U.S. 651, 673 (1974) (citation omitted); see also Skehan v. Board of Trustees of Bloomburg State College, 669 F.2d 142, 148 (3d Cir. 1982) ("This rule of clear and express waiver has been consistently applied in cases in which a state has consented to suit in its own courts by statute; absent a clear declaration of a state's consent to a similar suit against it in federal court, such consent has not been inferred."); Ritchie v. Cahall, 386 F. Supp. 1207, 1209 (D.N.J. 1974) (holding that there is no consent to suit in federal court within the statutory language of the New Jersey Tort Claims Act); and it further appearing that New Jersey has not, expressly nor by statute, waived its Eleventh Amendment immunity from suit in federal court;

and the Court having considered the submissions of the parties; and good cause appearing,

IT IS on this 14th day of April, 1999,

ORDERED that Defendant NJDOT's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) is GRANTED;

IT IS FURTHER ORDERED that the Complaint is DISMISSED as against Defendant NJDOT; and

IT IS FURTHER ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of this Order.

JOSEPH A. GREENAWAY, JR., U.S.D.J.

SILLS CUMMIS RADIN TISCHMAN EPSTEIN & GROSS

A PROFESSIONAL CORPORATION

ONE RIVERFRONT PLAZA
NEWARK, NEW JERSEY 07102-5400
(973) 643-7000
FAX: (973) 643-6500
E-MAIL: SILLSMAIL@SILLSCUMMIS.COM

712 FIFTH AVENUE
NEW YORK, NY 10019
(212) 643-7000
FAX (212) 643-6550

17 GORDON'S ALLEY
ATLANTIC CITY, NJ 08401-7406
(609) 344-2800
FAX (609) 344-7035

1800 K STREET, N.W.
SUITE 1010
WASHINGTON, D.C. 20006
(202) 518-2600
FAX (202) 296-4750

WRITER'S DIRECT DIAL NUMBER:
(973)643-5782

WRITER'S E-MAIL:
rdivita@sillscummis.com

ARTHUR J. SILLS (1917-1982)

STEVE S. CUMMIS
STEVEN S. RADIN
MICHAEL B. TISCHMAN
MORTON S. BUNIS
BARRY M. EPSTEIN
STEVEN E. GROSS
THOMAS J. DEMSKI
JEFFREY H. NEWMAN
LAWRENCE S. HORN
JEFFREY J. GREENBAUM
SIMON LEVIN
STEPHEN J. MOSES
MORRIS YAMNER
GERALD SPAN
ANDREW P. NAPOLITANO
WILLIAM J. MARTINI
JEFFREY BARTON CAHN
NOAH BRONKESH
LESTER ARON
STEVEN M. GOLDMAN
KENNETH F. OETTLE
ALAN E. SHERMAN
ROBERT J. ALTER
IRA A. ROSENBERG
ROBERT CRANE
PHILIP R. SELLINGER
JACK M. ZACKIN
ARLENE ELGART MIRSKY
THOMAS S. NOVAK
JERRY GENBERG
STUART M. FEINBLATT
MARGARET F. BLACK
BRIAN S. COVEN
TRENT S. DICKEY
JOSEPH L. BUCKLEY
KATHLEEN GENGARO
DAVID J. RABINOWITZ
THOMAS JAY HALL
MICHAEL I. CHAKANSKY□
STANLEY U. NORTH, III
JAMES D. TOLL
JAMES M. HIRSCHHORN
ALLAN C. BELL
RONALD C. RAK
DAVID W. GARLAND
MARK S. OLINSKY
RICHARD J. SAPINSKI
VICTOR H. BOYAJIAN
PHILIP R. WHITE
STUART J. GLICK
ALAN J. COHEN
LORI G. SINGER
MARK E. DUCKSTEIN
BETH S. ROSE
JACK WENIK
FREDERIC M. TUDOR
JEFFREY M. POLLOCK
TED ZANGARI
STEVEN R. KAMEN
NATHAN E. ARNELL
ROBERT R. DIVITA
A. ROSS PEARLSON
LINDA B. KATZ
GARY W. HERSCHMAN
RICHARD H. EPSTEIN
PAUL P. JOSEPHSON

SENIOR COUNSEL

DAVID BECK
HERBERT L. ZUCKERMAN

OF COUNSEL

MITCHEL E. OSTRER
KENNETH R. WEINER□
DIANE M. LAVENDA
CHERIE LEE MAXWELL
STEVEN R. ROWLAND
ERIC S. ARONSON
HELEN KLEINER

□ADMITTED IN NY ONLY

NOEL D. HUMPHREYS
KATHERINE SLOSS□
HARRY B. NORETSKY
JULIA L. BONSAL□
LAURENCE W. FUTTERMAN□
CYNTHIA P. LIEBLING
JAMES E. BRANDT□
ALBERT M. PAILET
ERIC D. MANN
ERIC W. SLEEPER
BENNET SUSSER
STEVEN S. KATZ
ROSS N. HERMAN
BRENDA J. REDIESS-HOOSEIN
BARBARA QUACKENBOS
LORYN P. RIGGIOLA
LYNNE ANNE ANDERSON
DAVID J. PAPIER
KAREN LEVINE
PHILIP E. STERN
PAUL F. DODA
RHONDA SOBRAL O'TOOLE
ANDREW H. SHERMAN
A. THOMAS SOUTHWICK
IVAN J. KAPLAN
STEVEN D. GORELICK
ADAM J. KAISER
WILLIAM J. TINSLEY, JR.
WILLIAM R. STUART
ROBERT I. SIEGEL
ANDREW W. SCHWARTZ
JENNIFER L. BOROFSKY
ROBERT R. HEMPSTEAD
GWEN L. COLEMAN
SUSANNE K. ROSENZWEIG
LORI M. WALDRON
DANIEL A. SCHLEIN
AMY M. BELGER
WILLIAM R. HORWITZ
BEN-TZION H. ZUR
CHRISTIAN PETER JOHNSON□
JEFFREY M. DARWICK
CAROLYN M. STOCKDALE
DAVID JAY
ERIC I. ABRAHAM
VALERIE A. HAMILTON
DERRICK R. FREUOMIL
JACQUELINE VALOUCH
KELLY ANN GUARIGLIA
ELBERT F. NASIS
JODI F. BOUER
BRETT M. POPOLOW
MICHELE K. THOMAS
KRISTEN SKOG BUERSTETTA
JONATHAN N. MARCUS
ELNARDO J. WEBSTER II
MARGUERITA B. DOLATLY
JAMES E. JASAITIS
MICHAEL S. MIRONE
JOSEPH A. BECHT
ROBERT J. FARKAS
RICHARD T. CADIGAN
KATHLEEN CROCCO
KENNETH HAYES
JOSHUA M. SACHS
DEBRA M. LIGHTNER
NAOMI I. COHEN
VINCENT R. LODATO
STEVEN MAGER
BRIGETTE N. SHRANK
WILLIAM LOUIS HURLOCK
ANNE BUCKLEY

PLEASE REPLY TO NEWARK

November 24, 1999

Federal Express

Ken McPherson, Jr., Esq.
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, NJ 07096

Re: Hudson Meadows Urban Renewal Development Corp. -v-
Town of Kearny, et als.
United States District Court
District of New Jersey
Civil Action No. 97-5727 (JAG)

Dear Ken:

Enclosed please find two (2) countersigned originals of each of the Stipulation of Settlement and the Order settling the claims of our respective clients in the above captioned matter.

Please arrange to have the papers filed with the Court at your earliest convenience.

Thank you for your attention to this matter.

Very truly yours,

Robert R. DiVita

cc: Mimi Feliciano (Via Telecopy)

WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
Secaucus, New Jersey 07096
(201) 863-4400
Attorneys for Defendant
Town of Kearny

HUDSON MEADOWS URBAN RENEWAL CORPORATION;	:	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
Plaintiff,	:	
v.	:	
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION, TOWN OF KEARNY, et als	:	Civil Action No. 97-5727(JAG)
Defendants.	:	STIPULATION OF SETTLEMENT

The matter in controversy referenced above having been amicably resolved by and between the parties hereto, pursuant to amendment, dated November 2, 1999, of the First Lease and Master Leasing and Option Agreement ("Amendment") executed by the Hudson Meadows Urban Renewal Corporation ("Hudson Meadows") and the Town of Kearny ("Town"), and in accordance with said Amendment it is hereby stipulated and agreed by the parties hereto, through their respective attorneys, that the Complaint by Hudson Meadows shall be dismissed with prejudice with respect to those allegations raised against the Town, and the counterclaims asserted by the Town against Hudson Meadows shall also be so dismissed with prejudice, subject to, and in accordance with, the following terms hereof:

(1) Hudson Meadows hereby waives, releases and relinquishes the Environmental Claims, as defined in the Amendment, and further stipulates and agrees to defend and indemnify the Town against Environmental Claims in accordance with Article 19.1 of the Amendments, subject to the

conditions and limitations set forth in Articles 19.2 and 19.3 of the Amendment.;

(2) Notwithstanding a prior stipulation entered in previously settled litigation between the parties hereto (Civil Action No. 84-4056 NHP), Hudson Meadows shall not be required to attract the development of a major league baseball stadium, in accordance with Article 19.4 of the Amendment;

(3) All prior stipulations of settlement entered into between the Town and Hudson Meadows, shall remain in full force and effect, except where inconsistent with the terms of the Amendment, as further set forth in Article 19.5 of the Amendment;

(4) Hudson Meadows hereby withdraws and waives all claims and contentions relating to disqualification of the Town attorney appearing in the above referenced action and representing the Town in the settlement of this matter, in accordance with Article 23 of the Amendment;

(5) In accordance with Article 19.5 thereof, the terms of the Amendment shall be, and hereby are, incorporated herein by reference as though set forth herein in their entirety; and

(6) The parties hereto have stipulated and agreed to execute and file, a consent order, in the form attached hereto, providing for the dismissal, in accordance with paragraph (1) hereof, of the claims and counterclaims asserted between the parties hereto.

WATERS McPHERSON McNEILL
Attorneys for the Defendant, Town of Kearny

By: _____
Kenneth D. McPherson, Jr.

Dated: 11/22/99

SILLS, CUMMIS, ZUCKERMAN, RADIN, TISCHMAN, EPSTEIN & GROSS, P.A.
Attorneys for Plaintiff
Hudson Meadows Urban Renewal Corporation

BY: _____
Robert DiVita

DATED: 11/24/99

246613.1

Kenneth D. McPherson, Jr. (KM8899)
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
Secaucus, New Jersey 07096
(201) 863-4400
Attorney for Defendant
Town of Kearny New Jersey

HUDSON MEADOWS URBAN RENEWAL CORP., a Corporation of the State of New Jersey, f/k/a Mimi Urban Renewal Development Corp.,	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
Plaintiff,	CIVIL ACTION NO. 97-5727 (JAG)
v.	ORDER
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION, et als.	

The above captioned matter having been brought before the Court on behalf of defendant Town of Kearny, New Jersey ("the Town"), and on behalf of Hudson Meadows Urban Renewal Corp. ("Hudson Meadows"), plaintiff in the captioned matter (collectively, "the Settling Parties"), on notice, pursuant to L. Civ. R.58.1(b), to the other parties to the matter, that the Settling Parties seek entry of the instant order, voluntarily dismissing, pursuant to L. Civ. R. 41.1 (b), the claims asserted in the captioned matter by Hudson Meadows against the Town, and voluntarily dismissing the counterclaims asserted by the Town against Hudson Meadows (collectively, "the Settled Claims"), and it appearing herefrom that the Town and Hudson Meadows have stipulated and agreed, pursuant to a written agreement dated as of November 2, 1999, to the amicable resolution of the matters in dispute between them, and it further appearing that the Settling Parties have consented to the entry of this order, as indicated by the execution

of this order by the respective attorneys for the Settling Parties, stipulating and consenting, on behalf of the Settling Parties, to the terms hereof and for good cause shown,

IT IS on this ____ day of November, 1999

ORDERED that the Settled Claims shall be and hereby are dismissed with prejudice and without costs in favor of or against either of the Settling Parties.

Joseph A. Greenaway, U.S.D.J.

We Hereby Stipulate and Consent
To The Terms Hereof

11/24/99

Robert R. DiVita
Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, P.A.
on behalf of Plaintiff
Hudson Meadows Urban Renewal Corp.

11/22/99

Kenneth D. McPherson, Jr.
Waters, McPherson, McNeill, P.C.
On Behalf of Defendant
Town of Kearny, New Jersey

225338.1

JEFFREY M. POLLOCK, ESQ. (JM 1565)
SILLS CUMMIS RADIN TISCHMAN
EPSTEIN & GROSS, P.A.
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
Attorneys for Plaintiff
Hudson Meadows Urban Renewal Development Corp.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HUDSON MEADOWS URBAN RENEWAL DEVELOPMENT CORP., A CORPORATION OF THE STATE OF NEW JERSEY, F/K/A MIMI URBAN RENEWAL DEVELOPMENT CORP.,

Plaintiff,

-v-

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION ET AL,

Defendant.

Civ. Act. No. 97-5727 (FSH)

ORDER

The above captioned matter having been brought before the Court on behalf of the defendant Town of Kearny, New Jersey ("the Town") and on behalf of Hudson Meadows Urban Renewal Corp. ("Hudson Meadows"), plaintiff in the above matter (collectively, the Settling Parties"), on notice, pursuant to L. Civ. R. 58.1(b), to the other parties in this matter, that the Settling Parties seek entry of the instant order, voluntarily dismissing, pursuant to L. Civ. R. 41.1(b), the claims asserted in this action by Hudson Meadows against the Town, and voluntarily dismissing the counterclaims asserted by the Town against Hudson Meadows (collectively, the "Settled Claims"), and it appearing therefrom that the Town and Hudson Meadows have stipulated and agreed, pursuant to a written

agreement dated November 2, 1999, to the amicable resolution of the matters in dispute between them, and it further appearing that the Settling Parties have consented to the entry of this Order, as indicated by the execution of this Order by the respective attorneys for the Settling Parties, stipulating and consenting, on behalf of the Settling Parties to the terms hereof and for good cause shown, it is on this 23 day of February, 2000.

ORDERED, that the claims settled pursuant to their written agreement of November 2, 1999, between the Town of Kearny and Hudson Meadows shall be hereby dismissed with prejudice without cost in favor of or against either of the Settling Parties; and

IT IS HEREBY FURTHER ORDERED, that the rights and interests of all other parties asserted in this action are hereby preserved. In particular, while the claims between Hudson Meadows and the Town have been dismissed with prejudice, the claims and all legal rights that any other parties may have against either Hudson Meadows, the Town, or each other are specifically preserved, including bu not limited to, the right to assert any and all claims against the Town and Hudson Meadows, to challenge the validity, enforceability, or fairness of the Settlement Agreement, the liability of the Town and Hudson Meadows under any environmental law, the apportionment of any damages among the plaintiff and the remaining defendants in connection therewith, and to take any and all discovery that may be appropriate from the Settling Parties regarding all relevant issues. Nothing in this Order shall constitute a waiver of any rights, position or arguments that the non-settlors may have against the Town, Hudson Meadows or any other party.

HONORABLE FAITH S. HOCHBERG,
UNITED STATES DISTRICT JUDGE

We hereby stipulate and consent to the terms hereof.

JEFFREY M. POLLOCK, ESQ. (J.M 1565)
SILLS CUMMIS RADIN TISCHMAN
EPSTEIN & GROSS, P.A.
Attorneys for Plaintiff
Hudson Meadows Urban Renewal
Development Corp.

KENNETH D. MCPHERSON, JR. KM 8899
WATERS, MCPHERSON, MCNEILL, P.C.
Attorneys for Defendant, Town of Kearny, New Jersey

2/7/00

JEFFREY M. POLLOCK, ESQ. (JM 1565)
SILLS CUMMIS RADIN TISCHMAN
EPSTEIN & GROSS, P.A.
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
Attorneys for Plaintiff
Hudson Meadows Urban Renewal Development Corp.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HUDSON MEADOWS URBAN RENEWAL DEVELOPMENT CORP., A CORPORATION OF THE STATE OF NEW JERSEY, F/K/A MIMI URBAN RENEWAL DEVELOPMENT CORP., Plaintiff. -v- HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION ET AL, Defendant.	Civ. Act. No. 97-5727 (FSH) **STIPULATION OF DISMISSAL UPON CONSENT OF ALL PARTIES WITHOUT PREJUDICE**

The above captioned matter having been brought before the Court on behalf of plaintiff Hudson Meadows Urban Renewal Corp. ("Hudson Meadows") and all defendant parties in this matter (hereinafter "Defendants") having consented to plaintiff's voluntary dismissal of this matter pursuant to Fed. R. Civ. P.41(a)(1):

1. IT IS hereby ordered that this matter is dismissed without prejudice and without costs against or in favor of any party pursuant to Fed. R. Civ. P. 41(a)(1):

2. **AND IT IS FURTHER ORDERED** that all of the terms of this Court's Order dated 2/23/00 regarding the preservation of all claims against Hudson Meadows and the Town of Kearny by defendants, shall control any litigation subsequently filed by Hudson Meadows or the Town of Kearny against any of the defendants named herein seeking recovery of costs associated with the investigation/remediation of alleged contamination at the property at issue in this action.

HONORABLE FAITH S. HOCHBERG.
UNITED STATES DISTRICT JUDGE

We hereby stipulate and consent to the terms hereof.

JEFFREY M. POLLOCK, ESQ. (JM 1565)
SILLS CUMMIS RADIN TISCHMAN
EPSTEIN & GROSS, P.A.

We hereby stipulate and consent to the terms hereof.

2-14-08

JOHN M. AGNELLO. ESQ.
CARELLA. BYRNE. BAIN. GILFILAN.
CHECCI. STEWART & OLSTEIN

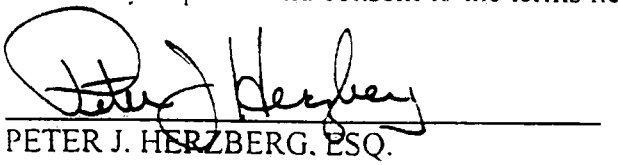
We hereby stipulate and consent to the terms hereof.

FRANK WELZER, ESQ.
ZEVNIK, HORTON, GUIBORD, MCGOVERN,
PALMER & FOGNANI, LLP

We hereby stipulate and consent to the terms hereof.

LOUIS M. DESTEFANO, ESQ.
CARPENTER BENNETT & MORRISSEY

We hereby stipulate and consent to the terms hereof.



PETER J. HERZBERG, ESQ.
PITNEY, HARDIN, KIPP & SZUCH

We hereby stipulate and consent to the terms hereof.

RICK A. GARCIA, ESQ.

We hereby stipulate and consent to the terms hereof.

JAMES STEWART, ESQ.
LOWENSTEIN SANDLER, P.C.

We hereby stipulate and consent to the terms hereof.

James E. Tyrell Jr.

JAMES E. TYRRELL, JR., ESQ.
LATHAM & WATKINS